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The Solicitors' Journal

VOL. LXXIX. **Saturday, December 28, 1935.** No. 52

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Current Topics.

Curves of Litigation.

ALTHOUGH by no means embracing the whole work of the profession, litigation naturally bulks largest in the public eye. In amount it naturally varies from year to year, but it is always of interest to observe this variation and to note the different subjects which from time to time chiefly call for the consideration of the courts. Not so many years ago the Rent Restriction Acts provided ample scope for judicial elucidation; now, these have shrunk into comparative insignificance, their place being taken by others which have received an access of importance through newer legislation, as, for example, insurance through the Road Acts and the compulsory protection against third party risks. But the subject which seems ever to be at the peak is Revenue, seeing that it touches the citizen in his pocket so acutely in view of the income tax which is now and for some time has been at a rate which would have appalled our forefathers and is such as to make a heavy drain on individual investments and earnings. Considering this, it is not surprising that the decisions on the Income Tax Act occupy a large, and, indeed, a predominant place in the Digests. Before the War, shipping had a large number of columns to itself in the Digests, seeing that bills of lading and charter-parties with their involved clauses and their profusion of "and/ors" afforded plenty of room for dispute as to their meaning. Now those palmy days are gone, at least for the present, but the sea still yields a considerable harvest of questions for decision in collision and salvage cases. These rarely have much importance from the purely legal standpoint, nor have what are usually called running-down actions, although occasionally a point as to the appropriate measure of damages emerges and requires elucidation.

Ribbon Development.

IN the course of an address before the Chartered Surveyors' Institution on the Restriction of Ribbon Development Act, 1935, Mr. A. T. V. ROBINSON, Deputy-Secretary of the Ministry of Transport, recently alluded to some misunderstanding which seems to have been entertained in certain quarters regarding the scope of the measure. There had, he said, never been any idea of imposing a building line 220 feet back. The sterilisation of a strip of that width on either side of the 40,000 miles of classified and 130,000 miles of unclassified roads would be economically impracticable. As to the prescription of building lines, landowners and their agents might well desire the prescription of such lines in order that they might know how they stood, for the existence of a maximum of 220 feet would give them no guidance. Section 9 (4) of the Act provides, it may be remembered that in awarding compensation under the section in respect of any estate or interest in land, the compensation shall, subject to the provisions of the section, be a sum equal to the difference between the market value of the estate or interest when the piece of land is subject to the restrictions and what would have been the market value of that estate or interest if the piece of land had not been so subject. Commenting on this provision, Mr. ROBINSON observed that "market value," and not "value to the owner," had been advisedly adopted in the Act. Local bodies and landowners might well consider the advantage of "depth" or "group" development, rather than of even an improved form of ribbon development. This is, indeed, the case; for, if the effect of the main part of the Act is merely to set back from the roadway a continuous line of buildings, albeit provided with their own service roads, there will be little improvement in the appearance of urbanised or sub-urban areas, although admittedly the traffic needs will have been better provided for. Such matters, however, are the concern of the planning authority, and could hardly have been dealt with appropriately in a statute of the character in question. The harmonious working of the local planning and highway authorities and the means by which such can be furthered by co-operation between the Minister of Health and the Minister of Transport, with whom, each in his own sphere, the ultimate authority is in ordinary cases vested, has already formed the subject-matter of an official notification which was duly alluded to some time ago in this column. Reverting to the above-mentioned address, attention may be drawn to the interesting suggestion that the grant of permission for general access to a restricted highway might very possibly enable an authority to obtain some credit for "betterment" of adjacent lands, and so reduce any compensation that an owner might claim.

International Copyright.

WE made some reference in a recent issue to this subject, and it is thought that the views of a recent correspondent to *The Times* which have particular significance for authors whose works do not command the widest circulation, may be of interest to our readers. The writer states: "If the few distinguished authors for whom it is an easy matter, in spite of the technicalities, to obtain copyright in the United States, do not feel disposed to band together and assist less fortunate authors, our only course is to appeal through your columns to the public who read the books and attend the theatres and cinemas." The United States have never joined the international convention dealing with the protection of copyright property and, the writer urges, receiving from Great Britain

the simplest terms for obtaining copyright for its citizens, it has never granted us a just reciprocity, but have for more than forty years forced British subjects not only to print their works in the United States in order to obtain protection, but also to conform to various other troublesome technicalities which make it impossible, for various reasons, for British authors and dramatists who have not made their mark to protect their work from piracy in America. The subject is one of some complexity, and it is impossible here to enter into the various factors involved, but the foregoing statement points to the existence of a real hardship inviting appropriate efforts directed to its removal.

Petroleum in Great Britain.

In view of our recent paragraph on this subject, it may be of interest to note that the dispute therein alluded to between a company desiring to conduct boring operations for oil and certain residents in the locality has been decided in favour of the former in so far as permission for drilling has been granted by the Ministry of Health, and the refusal of the rural district council in question to permit such operations has been negatived. The case is in many ways an interesting one. Undertakings holding licences before the passing of the Petroleum Act, 1934, are excluded from its provisions. The company in question is the only one to hold such a licence, which is specifically referred to in the provisions of the Act, and all oil recoverable will, therefore, be its own property and not subject to the payment of a royalty to the Exchequer. The managing director of the company referred, in the course of a statement on the outcome of the dispute, to the report of the Royal Commission on Coal Supplies in 1903, where allusion is made to two borings in Sussex, in one of which the borers struck gas, while at the other end, at a depth of 300 feet, they struck a seam of 20 feet "giving a splendid yield of petroleum." Hitherto, it was pointed out, it has not been possible to get down to the requisite depth, although experimental drilling in the neighbourhood where the new well is being sunk, and which went to a depth of 1,886 feet, showed oil at six points. As previously noted, arrangements have now been made to go to a depth of 4,000 feet if necessary.

Ordnance Maps and the Metric System.

We doubt if the suggestion that the metre should be substituted for the yard as a unit of measurement in British ordnance maps is likely to find much favour with users. In the course of a recent discussion by the Fellows of the Royal Geographical Society, Brigadier M. N. MacLeod, Director-General of the Ordnance Survey, said—we quote from *The Times*—that he favoured a change to the metric system in the new edition of the ordnance survey maps. Attempts to adopt the metre as a unit of measurement had always been defeated by a small margin, and he thought that this was due principally to the fact that such an alteration was linked, in people's minds, with a change-over also to the metric systems of weights and coinage—both much more difficult problems. The same speaker intimated, in reply to the discussion on the matter, that whatever unit of measurement was decided upon for the new maps would have to remain in use for at least twenty-five years, and perhaps longer. In the course of the discussion one speaker said that Britain fought the War "on the yard" and expressed his conviction that the Post Office, excellent as it was, would break down under the flood of protest from the public if the metric system of measurement were introduced. Others suggested that whatever unit was adopted in the new maps the public would be practically unaffected. They would use the maps, as they did now, chiefly for the purpose of finding places with the help of the index. The metric system has many advantages, particularly from an instructional standpoint and, most obviously, from its inherent simplicity. Those concerned in the precise dimensions of land in a legal or administrative capacity are not, however, likely to welcome a change which would entail anything but a simplification in their direction.

Housing Act, 1935: Rent Rebates.

Section 51 of the Housing Act, 1935, which sets out certain conditions to be observed by local authorities in regard to their houses, provides (sub-s. (5)) that in fixing rents the authorities shall take into consideration the rents ordinarily payable by persons of the working classes in the locality, but may grant to any tenant such rebates from rent, subject to such terms and conditions, as they may think fit. A statement on the subject of rent rebates, recently sent by the Family Endowment Society to the borough councils of England and Wales, draws attention to the fact that housing subsidies, first generally attached to houses without regard to the means of those who were to occupy them, later became utilised in such a way that rent relief should be given only where needed and a system of differential rents became to some extent established. The Act of 1935, it is intimated, goes further, and gives local authorities the opportunity to make a fresh start by reconsidering their housing schemes as a whole and establishing a system of rebates in place of flat rate reductions. "Every family," the statement explains, "living in one of the million subsidised houses built since the war has a part of its rent paid out of the rates and taxes; the annual cost of such relief given through subsidies is about £16,500,000 a year. Yet only a fraction of this sum goes to benefit the poorer families for whom it was primarily intended. This is because the post-war subsidies, applied on a rigid flat rate basis, have generally proved insufficient to bring the rents of 'council' houses within the means of the lower paid workers, especially those with young children; consequently, many subsidised houses have been allocated to comparatively well-to-do and often childless couples." The most just and economical way of distributing a limited sum among what are described as an unlimited number of claimants is, it is urged, to ration it out according to need and, applied to municipal housing, this points to rebates graded according to means, in the place of flat rate reductions in rent. Subsidies, instead of being averaged over all the tenants, would be withheld, wholly or partially, from the more prosperous and those whose family responsibilities were lightest, and the surplus thus freed could be used to make special reductions in rent where they were necessary. The system has much to recommend it, but it is not free from disadvantages. To mention only one, it constitutes in reality a system of poor relief which should logically come within the scope of public assistance. Moreover, the personal factor, where a number of people are enjoying virtually the same thing at different prices, cannot be disregarded.

Traffic Diversion: Overhead——

In the course of a paper on the development of town and country road passenger services lately read before members of the Institute of Transport, Lieutenant-Colonel A. W. C. Richardson advocated the immediate preparation of bold plans for the reconstruction of roads, pedestrian pathways, parking places, bottle-necks, and narrow streets in view of the continually increasing volume of traffic in the metropolis. Traffic, he said, must not be slowed down; it must be speeded up, not in parts, causing congestion elsewhere, but as a whole. To do this pedestrians must be removed from the motor roads and accommodated, safely and comfortably, above the traffic on a level with the first floor of buildings and shops. These pathways would be connected across the roads by means of bridges. Shop windows would be on the first floor, and buildings and shops set back where such a course was feasible. The speaker admitted that the plan would be costly, but it was far from impossible. Moreover, if traffic continues to increase and no restriction is placed on the user of private vehicles in the central area, it was thought that all movement

would tend to cease and the loss occasioned would be out of all proportion to the cost of immediate reconstruction. The adoption of such expedients as one-way working, fixing of omnibus stopping places, widening of roads, and the provision of roundabout workings and traffic lights, excellent though they might be, were viewed as to some extent merely palliatives and as hardly keeping pace with the growth of traffic to-day. The speaker submitted to his hearers that the charge of lack of imagination on the part of their predecessors might equally be made against those who are at the present time responsible for transport.

——and Underground.

Section 16 (1) of the Restriction of Ribbon Development Act, 1935, provides, *inter alia*, that the powers of a local authority under s. 68 of the Public Health Act, 1925—that section relates to the provision of parking places for the relief or prevention of traffic congestion—shall include power to provide and maintain underground parking places for the like purpose. A recent writer to *The Times* duly adverted to the changes brought about by this Act and urged that the time had come for bold and comprehensive action. The need for greater parking facilities was illustrated by the fact that, while in the year 1932-3 about 100 persons a week were charged with obstruction by vehicles in the Metropolitan Police area, in the following year that figure was approximately trebled. Reference was made to a report of an Advisory Committee of the London County Council which some months earlier described the provision of parking space as "one of the most urgent problems in London," and suggested using the ground beneath certain London squares for the purpose. None of the mechanical or physical difficulties, the report stated, were insurmountable, whereas congestion of the streets and irritation and risks to vehicle users and pedestrians alike would be greatly reduced. The same writer goes into the reasons for the uneconomic nature of the underground car park—the high capital expenditure, and the margin of waste space necessary for manœuvring vehicles which he states usually amounts to 55 per cent. of the total floor space. The economic difficulty can, he urges, be largely overcome by mechanisation which implies the moving of vehicles by other means than their own power for manœuvring and parking purposes. He concludes: "It would perhaps be unreasonable to ask a local authority to bear the total cost of what is in part a national obligation, but if it can be shown that a contribution of one-half of the cost by the Exchequer will enable the council or corporation concerned to construct a car park from which the operating revenue will leave an adequate margin to meet the interest and sinking fund charges on the expenditure incurred, it is surely reasonable that steps should be taken in the matter without delay." Perhaps the systematic provision of up-to-date garages at various points providing easy access, such as by tube railway, to the centre of London, would provide a useful palliative.

Licensing Statistics: Convictions for Drunkenness.

The licensing statistics for 1934, which have just been issued by the Home Office (Stationery Office, 1s. net), record an increase in the number of convictions for drunkenness compared with that for 1933, which itself showed an increase over the number for the previous year. In 1931, 42,343 convictions were recorded. For 1932, 1933 and 1934 the figures are respectively 30,146, 36,285 and 39,748. During the year last named the number of convictions reported to be due to the drinking of methylated spirits was 697, exhibiting an increase of fourteen over that for the previous year. The number of on-licences continues to decrease. The total of such licences in force on 1st January, 1934, was 75,955, compared with 76,418 at the beginning of 1933, and 76,886 at the beginning of 1932—figures providing an informative comparison with that for 1905, which was 99,480. Justices, off-licences increased by one to 22,056, licences for off-sale by retail held by wholesale dealers who do not require a justices' licence, decreased by nine to 1,639. An increase of 288 is recorded in the number of registered clubs, which numbered 15,298 according to the latest figures in the statistics. The total increase in such clubs since 1905 is 8,709. The number of registered clubs struck off the register after proceedings for offences was 197 in 1934, the number of persons convicted for offences therein being 1,584. Particulars are also given relating to the Licensing (Permitted Hours) Act, 1934.

Poor Relief: Recent Figures.

According to a recent statement issued by the Ministry of Health, there was a decrease in the number of persons in receipt of poor relief in England and Wales during the quarter ended last September, compared both with the previous quarter and the corresponding quarter of the previous year. Thus, on the last Saturday of September of the present year 1,280,942 persons were in receipt of poor relief—a figure which represents 3·17 per cent. of the population, and shows decreases of 1 per cent. and 1·4 per cent. in the figures for June, 1935, and September, 1934, respectively. It may be noted that at the end of September, 1913, the number of persons to whom relief was granted was 611,448. With regard to domiciliary relief, the figures for September, 1935, June, 1935, and September, 1934, were 1,113,133, 1,123,128 and 1,121,924 respectively. Similar decreases are recorded in the average number of persons returned as ordinarily engaged in some regular occupation, the number of those in receipt of relief for the same three dates respectively being 486,502, 511,305 and 526,445.

Recent Decisions.

In *Baildon Urban* (*Park Lane Areas*) *Confirmation Order*, 1935: *Baildon Urban Tong Park No. 1 Housing Confirmation Order*, 1935 (*The Times*, 17th December), it was held that a person objecting to a clearance order is not entitled to see the report made to the Minister of Health by the inspector appointed to conduct the local inquiry into the matter. Swift, J., intimated that the point was covered by the decision in *Local Government Board* v. *Arlidge* [1915] A.C. 120.

The question in issue in *Burgesses of Sheffield* v. *Minister of Health* (*The Times*, 18th December) arose in connection with an area which a corporation proposed to acquire under a compulsory purchase order. Part of this area, coloured pink on the map, was subject to a clearance order; part, adjacent to the former, coloured grey, was not so subject, and it was held that in considering whether the acquisition of the grey portion was reasonably necessary for the satisfactory development or user of "the cleared area" within the meaning of s. 3 of the Housing Act, 1930, the Minister was entitled to have regard to three other clearance areas within the confines of the same city, treating the four areas as one for the purposes of development. There was material upon which the Minister could have founded his decision, and the argument that the matter should be determined in light of the consideration that the grey land in the first-named area was unnecessary for the development of the pink land therein was negatived.

In *Rickett* v. *Oliphant* (*The Times*, 18th December) the Court of Appeal granted, on an *ex parte* application, leave to appeal against the order of a judge in chambers striking out the plaintiff's statement of claim on the ground that it was frivolous and vexatious. The proposition that any communication, whether oral or otherwise, between a representative of a Secretary of State and a representative of a foreign sovereign were in the highest degree confidential, and could not be made the subject of legal proceedings was, the Court of Appeal held, one that must be argued in open court.

More Clerical Errors.

MANY interesting clerical errors have occurred in conveyancing. But conveyancers are a modest class, and generally prefer not to speak of them. Yet their modesty has at times seemed excessive. One recalls the conveyancer who wrote, at the end of a draft appointment of new trustees: "I have settled this *Daft* Deed of Appointment." Another member of that most learned but modest profession began a draft vesting deed with the usual opening "This Vesting Deed." On second thoughts, he inserted the words "is a" between "This" and "Vesting Deed." He underlined "is," but no other words. Consequently the draft began: "This *is* a Vesting Deed." Sometimes an attempt to correct a clerical error only makes matters worse. In a highly "intimate" case came the words "X is the reputed daughter of Y." This was copied as "X is the *repented* daughter of Y"—which should have given some slight consolation to those who were shocked by the facts of the case. But the next version ran "X is the *repainted* daughter of Y."

The subconscious mind, no doubt, plays a large part in clerical errors. Such must have been the case with the lady typist, who, departing from the normal nice-mindedness of her sex, typed "Probate, Divorce and *Adultery* Division." More proper, but equally alarming, was the lady who told a friend that she had been asked to subscribe to the "Society for the Assistance of Escaped Convicts." One feels that such a society would arouse even more interesting discussions on public policy than those which have recently appeared in THE SOLICITORS' JOURNAL.

Abbreviations are a constant source of amusing errors. A young man noticed the letters "S.C." in reference to a reported case, and decided to copy the phrase in full. He copied it as "*Sed Cave*," doubtless regarding it as a timely warning. He was possibly a relation of the schoolboy who pleased his aged relatives by constantly showing an entry of expenditure in his diary under the heading "S.P.G." To a friend, however, he admitted that the purpose was not so charitable as it appeared; that, in fact, the letters "S.P.G." stood for the general residuary phrase "Sundries—Probably Grub."

Some clerical errors have caused wounded feelings. An acrimonious correspondence between solicitors was made still more bitter by a letter which began "*Deaf* Sir." An eminent conveyancer must have been annoyed to find himself described as a "*convenient* counsel to the court." The notion of a standing *amicus curiæ* for each court has not yet been adopted, as a means of relieving congestion. But what a number of names one could suggest!

Eminent persons themselves have sometimes perpetrated clerical errors. A well-known legal text-book contained a warning against the use of the terms "mortgagor" and "mortgagee." To save any risk of clerical errors, such terms as "lender" and "borrower" were advised. Yet, a few pages later, came the dangerous word "*mortgagor*." Worse still, it was used in obvious mistake for "*mortgagee*"! It was possibly the fear of making such mistakes that made one conveyancer describe the party advancing the money as the "*lendlord*"—a convenient hybrid.

And now a word in season. We would ask for a more lenient and at the same time a more sensible attitude towards the clerical blunderer. His errors are generally more amusing than injurious. The obvious clerical error is often far less serious in its results than the latent mistake, which may remain concealed for an entire lifetime and twenty-one years after. The purchaser who purports to convey property to the vendor is usually detected before engrossment, and no serious harm is done. We should not receive any less enlightenment than usual from a "Conveyancer's *Dairy*." The vendor's solicitor will study the purchaser's requisitions with careful attention, even if they are headed "Requisitions on *Tittle*."

Indeed, it might be urged that a tendency to make verbal slips was a sign of intellectual brilliance, however latent. A scientist, now famous all over the world, used frequently in his early lectures to say "acid" when he meant "alkaline," and conversely. Yet that did not prevent him from rising in his profession. Why should a higher standard be expected of lawyers than of other men?

Company Law and Practice.

Position of Receiver and Manager with regard to Contracts.—II.

WE saw last week that a receiver and manager appointed by the court in a debenture-holders' action could either fulfil existing trade contracts of the company without incurring any personal liability, or alternatively, decline to carry them out, thereby exposing the company to a claim for damages for breach of contract; but that he could not repudiate the company's existing contracts if such repudiation would injure its undertaking and goodwill and so depreciate the assets which might be available for unsecured creditors. This, generally speaking, is the position as regards trade contracts of the company current at the date of the appointment of the receiver and manager. But the effect of his appointment on service agreements existing between the company and its employees may be otherwise.

In *Reid* v. *The Explosives Company Limited*, 19 Q.B.D. 264, the plaintiff was in the defendant company's employment under a contract, one of the terms of which was that he should have six months' notice. In a debenture-holders' action a receiver and manager of the business of the company was appointed by the court; and for several months he carried on the business of the company and allowed the plaintiff to continue his employment at the same rate of pay. The company afterwards went into voluntary liquidation and for a further period of two months the plaintiff continued to perform the same duties as he had discharged from the beginning. The company's business was then sold to a new company and the plaintiff dismissed; and in consequence he brought an action for wrongful dismissal. It was held by the Court of Appeal that the appointment of the receiver and manager by the court had operated to discharge the plaintiff from his employment, and that at that time he was entitled to bring an action for breach of the contract of service between himself and the company; but since that time the plaintiff had had for a period equal to the time agreed on for notice of dismissal, employment of equal value to that which he had lost, and consequently he had sustained no damage. The important point to notice for our immediate purposes is the decision of the court that the appointment of a receiver and manager in the debenture-holders' action had *ipso facto* determined the contract of employment. Lord Esher, M.R. (at p. 267 of the report), said this: ". . . We have to consider what is the legal effect on a contract such as that between the plaintiff and the company of the appointment of a manager and receiver by the court at the instigation of debenture-holders or mortgagees. If there were one mortgagee of a business he might, on the failure of the mortgagor to comply with the terms of the mortgage agreement, take possession of the business. What would be the effect of that on the servants of the mortgagor who had contracts entitling them to notice of dismissal? Would the fact of the mortgagee taking possession be equivalent to dismissal by the mortgagor? We have tried to test that by the case of an employer who has servants in the same position and who shuts up his business. That would amount to a wrongful dismissal, and would give the servants a right of action. So the fact of a mortgagee taking possession of the business of the mortgagor would

be equivalent to a dismissal of the servants, and as this would occur by the default of the mortgagor, it would be a wrongful dismissal and would give a right of action. Is the result different when a receiver or manager is appointed by the court on behalf of a great number of mortgagees ? In that case, in order to avoid the difficulty of a number of mortgagees acting independently, the court acts on behalf of all, and appoints a manager in the interest of all, but the effect is the same as in the case of a single mortgagee who takes possession. It seems to me, therefore, that the result of such an appointment is to discharge the servants from their service to their original employer, and that, as in the other cases I have put, there is a wrongful dismissal for which an action would lie."

This decision is an authority for the proposition that the appointment in a debenture-holders' action of a receiver and manager operates *primâ facie* to determine service contracts, and it may have this effect on a director's contract : see *Measures Brothers Limited* v. *Measures* [1910] 2 Ch. 248, per Kennedy, L.J., at p. 261. But it would seem that the particular facts of each case must be considered, for, as was said by Fry, L.J., in *Reid's Case, supra*, and Lord Haldane in *Parsons* v. *Sovereign Bank of Canada* [1913] A.C. 160, at p. 171, even in the case of contracts of service it by no means follows as a matter of principle that all such contracts are determined when a mortgagee takes possession. Lord Haldane added that it was by no means clear that the mere appointment, although compulsory, of a manager to continue in the name of the mortgagor the existing management of an agricultural estate would effect such a disturbance of the owner's possession as to determine the agreements with the farm labourers employed on the property. And I should perhaps draw attention also to the remarks of Fletcher Moulton, L.J., in his dissenting judgment in *Whinney* v. *Moss Steamship Company Limited* [1910] 2 K.B. 813, at p. 826, where he said that the decision in *Reid's Case* turned on the special circumstances, and expressed a personal view that the appointment by the court of a receiver and manager of a company has in itself no more effect on any contract of the company or on the continued identity of the business of the company than a change of manager would have were it brought about by any other means, including the voluntary act of the company. Nevertheless, *Reid's Case* must, I think, be accepted to-day as an authority for the proposition I have put forward above.

So much for the effect of the appointment by the court of a receiver and manager on the company's current contracts, both trading and service. It remains to consider the position of the receiver with respect to contracts into which he himself enters. The general effect on the company of the appointment of a receiver and manager was described by Lord Atkinson in *Moss Steamship Company Limited* v. *Whinney* [1912] A.C. 254, at p. 263, in these words : " This appointment of a receiver and manager over the assets and business of a company does not dissolve or annihilate the company any more than the taking possession by the mortgagee of the fee of land let to tenants annihilates the mortgagor. Both continue to exist ; but it entirely supersedes the company in the conduct of its business, deprives it of all power to enter into contracts in relation to that business, or to sell, pledge, or otherwise dispose of the property put into the possession, or under the control, of the receiver and manager. Its powers in these respects are entirely in abeyance." Now a receiver appointed to carry on the business of a company may well find it necessary to enter into certain contracts for that purpose, and upon whom is the liability in respect of such contracts ? The receiver has not been appointed by the debenture-holders or by the company, so that he is the agent of neither and cannot make contracts upon which either could sue or be sued. His relationship to the court is such that, if it existed between him and an ordinary person he would be constituted an agent for such person, but, as Lord Esher pointed out in *Burt, Boulton & Hayward* v. *Bull* [1895] 1 Q.B. 276, it is impossible to suppose that the relation of agent and principal exists between the receiver and the court. The result is that contracts entered into by him as receiver and manager are *primâ facie* contracts entered into on his own responsibility and credit, in respect of which he himself is liable, though he has the correlative right to be indemnified out of the assets of the company in respect of the liabilities which he thus incurs. The authority for this is to be found in the case I have just mentioned—*Burt, Boulton & Hayward* v. *Bull*. There, the receiver and manager of the company's business, appointed by the court, ordered goods required for the purposes of the business. The order was signed by him but expressed to be given for the company, and the words " receiver and manager " were appended to his signature. It was held by the Court of Appeal that the receiver and manager was personally liable for the price of the goods. The other party to the contract has to look to the personal credit of the receiver, and the receiver trusts to the funds in hand or other assets of the company for indemnity. If this were not the case, then, as was pointed out, no tradesman could safely deal with the receiver without inquiry as to the existence of a fund to which he might look, whether, if such a fund existed, it was subject to other liabilities, and whether the business was being carried on by the receiver at a profit.

It may be thought that this personal liability of a receiver and manager exposes him to possibly severe hardship. But he has his means of protection. He has his right of indemnity, and if there is nothing out of which he can recoup himself, either he need not enter into the contracts or, if he does, he may expressly stipulate that he is to incur no personal liability, but that the other party must look to the assets of the business. If he feels any difficulty as to whether he should or should not enter into a particular contract he could apply to the court to secure the necessary personal protection. But the practical difficulties do, I think, arise only where there is an absence of assets out of which the receiver might obtain a sufficient indemnity ; though, even then, if he entered into unnecessary contracts, he might incur a personal liability. As was said by Lord Mersey in *Moss Steamship Company Limited* v. *Whinney, supra*, at p. 272 : " If he were to make contracts not necessary for the carrying on of the business, as, for instance, if he were to buy an excessive quantity of malt, or if he were to sell an unduly large quantity of beer, so as to cripple the business, he would be personally liable on the contracts, and when he came to pass his accounts, the court might refuse him any indemnity out of the assets in respect of the liabilities he had thereby incurred, and might also condemn him in damages for the loss resulting to the business in carrying out the contracts. It would not be for the persons contracting with him to inquire whether the contracts were such as came within the ordinary course of the business. [The receiver], who alone could ascertain whether they were so or not, would have to take the risk of making a mistake in that connection."

To sum up : A receiver and manager appointed by the court may either carry out or decline to fulfil the company's current trading contracts and in neither case will he, generally speaking, incur any personal liability. He must not, however, at least without the court's sanction, repudiate all such contracts if the result will be to damage the company's undertaking and goodwill. *Primâ facie*, service agreements with the company are discharged. The receiver will, in ordinary circumstances, be personally liable in respect of contracts into which he himself enters, but he has a corresponding right of indemnity out of the company's assets. These are general rules and I need hardly add that the particular facts to which in any case it is sought to apply them may require careful consideration.

A Conveyancer's Diary.

Consolidation of Mortgages —*continued.*

Last week I dealt with the case of *Cummins* v. *Fletcher* (1879), 14 Ch.D. 699, so far as that case was concerned with the right of consolidation where the legal right to redeem a mortgage in respect of which the right was sought to be exercised had not expired. There was another point decided which is important, but was not pertinent to the point which I was then discussing.

It seems quite clear from the decision that there can be no right of consolidation where one of the mortgages is, let us say, by A, and the other by A and B. In *Cummins* v. *Fletcher* there had been a mortgage by one of two partners alone and another by both partners in a firm, and it was held by James, L.J., that there was no right of consolidation.

Whilst on the subject I may consider the rules which apply to consolidation.

In the first place I may remind the reader that since the C.A., 1881, came into force, there is no right of consolidation unless s. 17 of that Act, now reproduced in s. 93 of the L.P.A., 1925, is excluded.

It is, however, and has ever since 1881 been, a common practice to exclude the operation of s. 17 of the C.A., and now s. 93 of the L.P.A., in most mortgages to a building society or a bank or other mortgagees who have advanced or may contemplate advancing further money to the mortgagor. Consequently, the matter becomes one of some importance.

I think that I have already sufficiently dealt with the effect of the exclusion of the statutory provision. I do not see how that exclusion can operate otherwise than to put the parties in the same position as they would have been in if there had been no such enactment. Therefore, the equitable doctrine, and the rules which have by a succession of authorities been laid down regarding it, must be considered.

One rule I have already referred to, namely, that the mortgages which it is intended to consolidate must be by the same mortgagor. There may be one mortgage by A and others by A and others, and although A may be in equity entitled to the whole of the sums secured by both mortgages, yet the right to consolidate does not apply.

I may pass over the essential requisite that there shall have been default on the part of the mortgagor, or, in other words, that the legal right to redeem shall have been lost. I dealt with that point last week.

Then there are other rules. Firstly, all the mortgages must have been created by the same mortgagor. That is a fairly obvious proposition and is borne out by the decision in *Cummins* v. *Fletcher*. So it was held in *Re Reggett: Ex parte Williams* (1880), 16 Ch.D. 117, that a mortgage by three persons could not be consolidated with a mortgage by two of them.

The next rule is that the mortgages which it is desired to consolidate one with another must all be in existence, that is, be such as the legal right to redeem has expired.

Whilst it is necessary that the mortgages shall have been made by the same mortgagor, it is not essential that all the mortgages shall, in the first place, have been to the same mortgagees. It is sufficient if at the time of consolidation the mortgages are vested in the same mortgagee. The units may exist in equity only, so there may be consolidation where the mortgage is in favour of different sets of trustees (in this connection, see *Jessel* v. *Smith* (1858), 2 De. G & J. 713).

It follows from what has been said that a mortgagee may, by acquiring the interest of other mortgagees, claim the same right to consolidate as though he was the original mortgagee in each case.

It appears also that the mortgages may be of different kinds of property. So, a mortgage of land may be consolidated with one which affects chattels only. There is, however, this exception to that rule, viz., that a bill of sale of chattels cannot be consolidated with any other mortgage.

It is another rule that when there have been several mortgages by one mortgagor and the right of redemption has been severed, there can be no consolidation unless the right to consolidation has already accrued. In such a case the purchaser of the equity of redemption takes subject to the equitable right which had arisen before the assignment to him and not subject to equities which might arise afterwards by dealings by the mortgagor with his interest in the mortgaged properties. So, a purchaser of an equity of redemption is not (so far as regards the right of consolidation) affected by any subsequent assignments by the mortgagor.

An interesting point is that where, in other respects, the right of consolidation exists, the right is not lost by reason of the mortgagee selling one of the properties under his power of sale (see *Selby* v. *Pomfret* (1861), 1 J. & H. 336; *Cracknell* v. *Janson* (1879), 11 Ch. D. 1). That appears to be accepted as applicable now, although the authorities for it were decided before the commencement of the C.A., 1881, since when a mortgagee exercising his power of sale holds the balance, if any, after the payment of principal, interest and costs in trust for the mortgagor. I have heard it contended, therefore, that no consolidation would be allowed now. I do not think that contention to be well founded. Before a sale by a mortgagee in exercise of his statutory powers, the mortgagor has an equitable right to redeem. After a sale, the mortgagor has an equitable right to the balance, if any, of the purchase price remaining in the hands of the mortgagee, who is a trustee thereof for him.

It seems to me that the equitable right of consolidation continues, the only difference in such a case being that the equitable right of the mortgagor is shifted, as it were, from the mortgaged property to the proceeds of sale or so much thereof as shall not have been applied in payment of the mortgage debt and all proper costs and expenses.

I am not sure, however, that this is so now, for s. 105 of the L.P.A., 1925, does not in terms state that the balance of the purchase price shall be held in trust for the mortgagor, but that it "shall be paid to the person entitled to the mortgaged property or authorised to give receipts for the proceeds of sale thereof." It may, therefore, be contended, with some force, that the interest of the mortgagor in such balance is not an equitable interest (and therefore not subject to the equitable doctrine of consolidation), but is his as a legal right, the Act directing payment thereof to him. That being so, I take it, that the mortgagor could sue at law for recovery of the balance and need not proceed in equity at all.

I know of no authority on that point.

Landlord and Tenant Notebook.

Tenant Right and Compensation: Incomer Paying Outgoer.

In *Bradburn* v. *Foley* (1878), 3 C.P.D. 129, Lindley, J. (as he then was), observed that the practice by which an outgoing farm tenant recovered his tenant right direct from the incoming tenant was one which prevailed all over England. The case was one in which the trustee of an ex-tenant (in liquidation), after unsuccessfully applying to the incomer, had sued the landlord in the county court, where it was held that there was a custom, and a valid one, by which the new tenant was, and the landlord was not, liable. The ex-tenant had himself paid the man who had held before him, under a clause in the tenancy agreement which, however, mentioned in parentheses "in exoneration of the landlord." Be that as it may, the judgment of Lindley, J., exploded and blew sky high the notion that such a practice as referred to could give rise to obligations in law. Among the objections were the fact that it would create a debt owing from a debtor whom the creditor had no chance of choosing; that there was no discrimination according to the debtor's intentions

in the matter of user or of the length of his term; that there was an absence of precision when the question of occupation not by a new tenant but by an undertenant was raised. It may be that if the defendant's expert evidence had gone as far as it could in the county court, the findings of that tribunal would have anticipated some of these objections; but I think it can be said that the practice, however prevalent, is never likely to be recognised as a custom having the force of law.

It had, indeed, enjoyed some apparent support; in *Faviell* v. *Gaskoin* (1852), 21 L.J. Ex. 84, an ex-tenant, who had paid for fallows, dressings, etc., when he had entered, sued the executor of his late landlord. The holding had been constituted by four separate pieces of land, one of which the landlord had himself held of the Crown, from which no tenant right could be recovered. The defendant relied (the jury having found the custom set up by the plaintiff proved) on a covenant in the underlease to abide by and perform and keep all and singular the covenants in the head lease, but it was held that this was merely a covenant of indemnity and in no way inconsistent with the right to repayment. There is one passage in the judgment of Parke, B., which reads as if the custom made the landlord liable only when there was no incoming tenant; but the judgment does not actually go as far as that when the context is examined.

In some parts of the country the tenant's right to claim for tillages, etc., against the landlord at the end of the tenancy appears to be so well established that the landlord may consider it security for the payment of rent. The case of *Re Wilson: Ex parte Hastings* (1893), 62 L.J. Q.B. 628, raised this question. A receiving order was made against a tenant shortly before his notice to quit expired. The landlord proposed to set off against the claim for tenant right arrears of rent due. Expert evidence established not only the custom by which the landlord and not the incomer was liable but also a custom by which arrears of rent were deducted from the valuation; indeed, no one, it was said, would think of lending a tenant money on the security of his tenant right. The case does not, of course, lay down that a landlord's right to rent in such a district is suspended pending valuation.

For other authorities in which the custom has been indirectly sanctioned, one can refer to *Mansel* v. *Norton* (1883), 22 Ch.D. 769, C.A., when, owing to agricultural depression, there was no incoming tenant to replace the outgoer on a farm held in trust. The question was whether life tenant or trustee should pay the outgoer, and was decided in favour of the trustee, as the life tenant received the rents and profits. In *Bennett* v. *Stone* [1902] 1 Ch. 226, payment of tenant right was held to be a "necessary disbursement" by vendors in default.

When outgoer and incomer meet and discuss things, they may, of course, arrive at an agreement enforceable by the law of contract. Lindley, J., in *Bradburn* v. *Foley*, *supra*, conceded this possibility; and when dealing with compensation for improvements, the Agricultural Holdings Act, 1923, makes special provision for the incomer who has followed the prevailing practice, giving him the right to stand in the shoes of the outgoer, but only if he made the payment with the written consent of the landlord (s. 6). There are but few recorded instances of such contracts having actually been proved. The possibility was also recognised in *Codd* v. *Brown* (1867), 15 L.T. 536. The evidence went to show that plaintiff and the defendant, outgoer and incomer, had agreed valuers and umpire, but the defendant adduced evidence that his act had been on behalf of the landlord, and it was held that the presumption was not rebutted. In *Stafford* v. *Gardner* (1872), L.R. 7, C.P. 242, a similar action, valuation had been agreed with the consent of the landlord's agent, who had subsequently obtained payment of the amount from the outgoer, under an indemnity, because the outgoer owed more than that amount in rent. In this case it was held that the circumstances of the valuation established a valid contract, but that all it amounted to was that the incomer was to be at liberty to pay over the money to the landlord. In support of this finding, there was the further fact that the outgoer was in possession of part of the premises under another custom entitling him to occupy that part rent free for a further six months; this, according to Willes, J., would have entitled the landlord to distrain.

In Scotland, the case of *Roger* v. *Hutcheson* [1922] S.C. (H.L.) 140, showed how an enforceable agreement between outgoer and incomer could be made, the former having surrendered his tenancy to the landlord under an agreement reserving rights to statutory compensation, and the landlord having let to the incomer on condition that he, the new tenant, should satisfy the old tenant's claims. The two agreed to an arbitration, and it was when their arbitrators disagreed that the umpire refused to function, thinking that the question should have been dealt with by a single arbitrator pursuant to the Act. It was held that the agreement for a common law arbitration was perfectly legal.

Our County Court Letter.

THE REMUNERATION OF DOCTORS.

In the recent case of *MacIlwaine* v. *Bourne*, at Westminster County Court, the claim was for £6 19s. 6d. for professional services, and the counter-claim was for £92 1s. 9d. as damages for negligence. The plaintiff's case was that he had given electrical diathermic treatment by means of a plate attached to an electric battery. The defendant had lifted her head and shoulders, thereby bringing the end of the terminal in contact with her skin. The defendant's case was that two small burns had been caused to her back, and (in addition to pain and suffering) she had been unable to wear four evening gowns, three beach suits and a bathing suit. These were Paris models, bought at the end of 1933 or early in 1934, and were still in fashion while the burns were showing, but had since become unsaleable. His Honour Judge Dumas held that the defendant had not made any movement, which the plaintiff could not reasonably have anticipated, and the wire was probably not made fast to the plate with sufficient care. A duty was owed to the patient, to see that the wire was so attached that it would not be detached by any ordinary movement. Judgment was given for the defendant on the claim, and also on the counter-claim for £42 and costs.

THE SALE OF AUTOMATIC MACHINES.

In the recent case of *F. Graucob Ltd.* v. *Foster and Wife*, at Durham County Court, the claim was for £60 as the value of an automatic cigarette machine. Liability was denied, on the ground that the contract was induced by the fraudulent misrepresentation of the plaintiffs' agent. The latter had stated that the machine would fit the only place available, whereas the machine, by reason of its size, could not be installed. The plaintiffs' agent denied having said that the defendants had a "beautiful site for the machine," or that they had signed through any misrepresentation by him. His Honour Judge Richardson gave judgment for the defendants, with costs.

INSURANCE OF GOODS ON HIRE-PURCHASE.

In *Times Furnishing Co. Ltd.* v. *Leighton*, recently heard at Liverpool County Court, the claim was for £24 for two quarters' rent of furniture, and £92 as damages for breach of a hire-purchase agreement. The latter was dated September, 1934, and the defendant, having paid £15 8s. 5d. as a deposit, agreed to pay £12 a quarter as from December. The first instalment was not paid, and in February, 1935, the defendant agreed to pay off the whole amount due, viz., £131 9s. 5d., subject to discount. The plaintiffs offered to take £98 in settlement, but their offer was not accepted, and (on the

assumption that the agreement was terminated) they tried to collect the furniture. Having been refused re-delivery, the plaintiffs sued for damages, but in June, 1935, the furniture was lost in a fire, which destroyed the defendant's house. The plaintiffs had insured the furniture, while the contract was in force, but not afterwards. The defendant's case was that, as an ex-Army officer, he was unversed in mercantile usages, and understood that the furniture was continuously insured by the plaintiffs. He had not read the clauses on the back of the agreement, when signing it, and no copy had been supplied. His Honour Judge Dowdall, K.C., held that the defendant repudiated the contract on the 24th April, and thereafter he kept the goods at his own risk. Judgment was therefore given for the plaintiffs for £116 and costs, the action having been remitted from the High Court.

Reviews.

Appeals from the Decisions of Local Authorities. By H. Samuels, M.A., of the Middle Temple, Barrister-at-Law. 1935. Demy 8vo. pp. xvi and (with Index) 117. London, Liverpool and Birmingham: The Solicitors' Law Stationery Society, Ltd. 10s. 6d. net.

This work appears at a very favourable opportunity. The enormous increase, in recent years, in the number of statutory duties imposed on, and powers entrusted to, local authorities, has rendered the question of appeals from the decisions of local authorities a matter of supreme moment. There are two forms of appeal—that to the Minister of the Department concerned, and the ordinary appeal to the Courts of Justice. The learned author of the volume before us has produced a most excellent and concise review of the subject in both its aspects. He divides it into two parts, the first dealing with remedies against local authorities apart from statute, and the second with appeals provided for by statute. In the latter case some appeals lie both to the Minister and to the courts; in others one type of appeal only is available. The distinction is clearly laid down in regard to each separate department of local administration, including Public Health, Housing and Town Planning, Highways (including Ribbon Development Restriction), Compensation of Officers and all the miscellaneous matters which come under the preliminary jurisdiction of local authorities. We think Mr. Samuels is to be congratulated upon having produced a work for which a very real need existed and upon having produced it in so clear and effective a style.

The Murder in the Temple and Other Holiday Tasks. By Sir Frank Douglas MacKinnon. 1935. Demy 8vo. pp. vii and 237. London: Sweet & Maxwell, Ltd. 7s. 6d. net.

If a certain ambiguity seems to lurk in the full title of Mr. Justice MacKinnon's volume the reader will speedily find that the second half of that title is not to be construed *ejusdem generis* with the first half, and he will find, furthermore, a great deal to interest and instruct him in each of the papers of which the book consists, the fruit of the leisure moments of the learned judge whose affections obviously are not bounded by bills of lading and charter-parties—couched, as one old reporter profanely expressed it, "in the usual commercial jargon"—documents to the exposition of which he devoted himself while at the Bar. Even the first paper, which re-tells the story of a gruesome murder perpetrated in the early years of the eighteenth century, is made the vehicle of numerous interesting topographical and other annotations. Following this comes an examination, pursued with meticulous industry, of the chronology of "Pickwick," in which Dickens is shown to have "nodded" continuously in his dates, thus offering a striking contrast to Jane Austen, who seems to have written with an almanac at her elbow; but though Dickens was chronologically inexact it is gratifying to find the author concluding his examination thus: "Let no one suppose that, when I note inaccuracies or anachronisms, I do so by way of depreciation; or that, if I compare the studied accuracy of Jane Austen, it is a comparison of merit rather than of method. No one ever derived more delight from Pickwick than I," and he adds that if compelled on a hypothetical desert island to choose between "Pickwick" and "Pride and Prejudice" he would have to resort to tossing up. Among the other papers, that on the High Sheriff will be found both informative and amusing, while the three papers devoted to aspects of Dr. Johnson attest an intimate acquaintance with, and love of, the whole of Johnsonian literature. In one of these we note with satisfaction the learned judge's vigorous protest against the "effigy of a dwarfish mulatto" supposed to represent Johnson which disfigures the back of St. Clement Danes. In the same paper, however, there is one statement to the accuracy of which the present reviewer must demur, the statement, namely, that the learned author is the only person alive who has looked into the "Observations on the Statutes" by Daines Barrington. Some years ago the reviewer went through this work, not certainly for professional edification, but in the hope of gleaning some curious lore regarding these old Acts, and in this quest being not disappointed, he, on that account, entertains a kindly feeling towards this one of Lamb's "Old Benchers." Lawyers, as such, will find interest in the account of Coke, and, in another connection, will find something to ponder over in the last of the papers, that on "Accurate Thought and Clear Expression." The volume is one which can be read and re-read with satisfaction and enjoyment.

The Housing Act, 1935. By T. J. Sophian, of the Inner Temple and South-Eastern Circuit, Barrister-at-Law. 1935. Royal 8vo. pp. ix and (with Index) 217. London: Sir Isaac Pitman & Sons, Ltd. 12s. 6d. net.

Among the numerous works which have been appearing as a result of the passing of this somewhat revolutionary measure, the volume before us supplies a well-printed, readable review, which opens with a complete exposition of the various changes brought about by the statute; the full text is then set out with annotations and cross-references in convenient form. A table of cases and an accurately drawn index complete a serviceable volume. The learned author is well-known as an authority on landlord and tenant matters, and his name should therefore ensure a substantial demand for the volume before us.

Books Received.

District Councils. A Concise Guide to their Powers and Duties. By H. W. Wightwick, B.A., of the Inner Temple, Barrister-at-Law. Second Edition. 1935. Demy 8vo. pp. xlv and (with Index) 604. London: Stevens & Sons, Ltd. 15s. net.

Lloyd's List Law Reports. Digest No. 5. 1931–1934. Edited by Charles W. Muir, of the Inner Temple and North Eastern Circuit, Barrister-at-Law, and R. Unwin Davis, of Gray's Inn and the Western Circuit, Barrister-at-Law. 1935. Crown 4to. London: Lloyd's. Price £2 2s. post free.

Snell's Principles of Equity. Chapter XXV—Married Women. Twenty-first Edition. 1935. London: Sweet & Maxwell, Ltd. 1s. net.

The Law Student's Landlord and Tenant. By A. M. Wilshere, M.A., LL.B., Barrister-at-Law. 1935. Demy 8vo. pp. iii and (with Index) 68. London: Sweet & Maxwell, Ltd. 4s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

THE LAW OF PROPERTY ACTS, 1925.

By A. F. TOPHAM, Esq., K.C.

A Verbatim Report of the Tenth of a Series of Lectures Delivered to The Solicitors' Managing Clerks' Association.

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The President (Mr. S. H. Vere): Gentlemen, as you know, this is our final Lecture of this course to-night. I propose to say a few words after Mr. Topham has finished, so I will now simply ask him to deliver his final Lecture.

Mr. Topham: Mr. President and Gentlemen, the next subject that I come to as dealt with in the Law of Property Acts is the subject of married women. There is not a great deal said about that in the Law of Property Acts, 1925. Of course, as you know, there has been a new Act dealing in a very important way with the position of married women. I understand you have already had a lecture delivered to you on that subject, so I will not go into that at any length, but merely comment on the Law of Property Acts so far as they have been affected.

The first section is s. 167, which says this: "Every disposition which a married woman is authorised to make by a deed acknowledged shall be effectual if made by her with the concurrence of her husband but without acknowledgment."

Now you may wonder whether that has any particular use at the present day, or whether it has not been really got rid of by the Law Reform Act of 1935; but you must bear in mind that that section is dealing only with the case of property which is not the separate property of the married woman. It applies to a case where a woman was married before 1882 and who acquired her property before 1882, and is still married to the same husband. Cases of that sort must be becoming more and more rare, but there are still women in that position, and in 1925 I suppose there were more. What that section did was merely this: that in cases of women who were married as long ago as that, and who acquired their property at that time, it was not necessary, or should no longer be necessary, for her to make a separate acknowledgment. The old method of a married women conveying land which was not her separate property was that she must get the concurrence of her husband and execute a deed with his concurrence and be separately examined to see that she really did consent. It was that separate examination or acknowledgment which was done away with; but that section remains entirely unaffected by the Law Reform (Married Women and Tortfeasors) Act of 1935. What that Act does, putting it shortly, is this: it does away with the separate property of a married woman altogether, and it puts the married woman in respect of her contracts and her torts and her property in precisely the same position as a woman who is not married; or in fact in the same position as a man. The only matter which is excepted from the provisions of that Act is the case of a woman who was married before 1882, who acquired her property before that time. Some people have asked: "Why did not the Act repeal all those sections which deal with the married woman who was married before 1882?" The answer to that is that the framers of the Act did not want to destroy vested rights. There are still husbands of women who have rights under the old law, and there is no reason to take that right away. Of course, in a very few years now that will cease to have any actual application. But remember that in the future it will be quite wrong to talk about the separate property of a married woman, because immediately on the Act taking effect the woman either has her property under the old law, which was not strictly her property—that is to say, as before the Act of 1882—or it is her own property and not possessed with any special attributes of being her separate property. That is why you will see, if you look at the repeals of earlier Acts, that in the sections of the earlier Acts where the words "separate property" appear, the word "separate" has for the most part been repealed.

There is one curious little point which is likely to arise on the Married Women and Tortfeasors Act, and that is this: the married woman is made subject to the bankruptcy rules, whereas under the law before that Act a married woman could only be made bankrupt if she was trading. There was a certain section, s. 125, of the Bankruptcy Act, which enabled a married woman to be made bankrupt if she was carrying on a trade. That section of the Bankruptcy Act has been repealed, and under the new Act the married woman is made subject to the ordinary bankruptcy laws. But then there is this exception, that this provision of the Act is not to apply to obligations incurred by the woman before the Act was passed, and, as s. 125 has been repealed, the question will no doubt arise as to whether you can in any way make a woman bankrupt who has been trading, in respect of her obligations which were incurred before the Act was passed. That is a point which some day will have to be decided. There has been a case somewhat bearing on it without deciding it, and the real question will be whether the Interpretation Act of 1889 does not preserve the right of making a woman bankrupt, although s. 125 of the Bankruptcy Act has been repealed.

Another section of the Law of Property Act dealing with married women is s. 169, which gives the court power to remove a restraint on anticipation. There again you will remember that the new Act of 1935 has for the future abolished restraint on anticipation; but, where a restraint has been created by a deed or a document dated before the Act comes into effect, that restraint will still be effective, and therefore you may still have restraint on anticipation going on for very many years, but with regard to any new document now being made you must bear in mind that you can no longer put in a restraint on anticipation. That provision, I think, has given rise to a certain amount of criticism of the Act, but I do not think people who criticise the Act quite realise that it is possible by making use of the protective trusts to give a married woman quite as good a protection, and in fact a more complete protection, than you used to be able to effect by a restraint on anticipation. You will remember that s. 33 of the Trustee Act puts a statutory blessing on these protective trusts by the use of the words "protective trusts." You may settle property quite simply by the use of those words. Section 33 of the Trustee Act says this: "Where . . . income . . . is directed to be held on protective trusts for the benefit of any person for the period of his life or for any less period . . ." it will be held for him for life or until he attempts to dispose of the property by going bankrupt, and so on; and if he does, it will be held on discretionary trust for the wife, husband, children, or any other persons if none of those persons are entitled on intestacy. So it is quite easy now. If, instead of giving property to a woman or girl with a restraint on anticipation during marriage, you settle it on protective trusts in the way set out in s. 33 of the Trustee Act, you give her just as good, or, I think, better, protection. You will remember that restraint on anticipation was supposed to protect a woman from the kicks or caresses of her husband, but possibly in modern times a married woman hardly needs that sort of protection, or, at any rate, to the extent she used to. But where the woman does require the greatest protection is where she is unfortunate enough

to lose her husband and becomes a widow. She may have relied on her husband to look after her affairs, and she is left without protection at all, and if the only protection is restraint on anticipation, that restraint is removed at the very time when she most needs protection. Therefore it has always seemed to me that if you are settling property on a wife or daughter you give much better protection by protective trusts for the wife or daughter than by any restraint on anticipation during coverture.

When this question of altering the law as to married women was being discussed, it may be interesting to you to know that quite a large number of societies interested in the emancipation of women, and things of that kind, wrote letters on this new law, and they were very anxious that the whole stigma of coverture should be done away with completely; and that, I think, the Act does.

It is suggested that one of the drawbacks to doing away with restraint on anticipation is in case of bankruptcy, because under the Bankruptcy Act you cannot settle property on yourself in such a way that there is to be a forfeiture on your bankruptcy. So you cannot effectively give yourself a life interest until you go bankrupt and then create discretionary trusts. That is true enough, but even in the case of a restraint on anticipation the woman was not completely protected if she became bankrupt, because under s. 52 of the Bankruptcy Act of 1914 the court had power to appropriate property which was subject to a restraint on anticipation for the benefit of her creditors so long as she was left with enough to live upon. So that I think, taking it all round, the protective trusts are just as good, if not better, for a married woman. Of course, you must remember that in any document which is being executed now you must not put in a restraint.

Another practical point to notice on that Act is that you will see that in the case of a will which was dated before the Act, although it might take effect afterwards, any restraint on anticipation in that will still remains good, but that is only for ten years. If it lasts for more than ten years after the passing of the Act, then that breathing space, as it were, is not allowed. The object of that was because you may remember that in cases like *Re Kempthorne* [1930] 1 Ch. 268, the dispositions of testators have been upset by the change of law taking place before they have had time to reconsider the dispositions in their will. A testator having made his will generally locks it up in a drawer, or something of that kind, and does not generally know that, some new Act having been passed, he ought to take his will to his solicitor and have it revised. However, it is the fact that any person now who has made a will settling property on his daughter ought to get it revised, because it may very well create a restraint on anticipation. It is all right if he dies in the next ten years, but, of course, wills are intended to go on for a very long time if necessary. So you might suggest to any of your clients, if you have settled their wills for them, that they ought to let you have a look at them and see whether they want revision in the light of this Act.

Another objection which is raised to doing away with restraint is this: that the court was given power, under the Law of Property Act, giving effect to earlier provisions, to remove the restraint in a proper case, and there is no provision in the Act under which the court can take the property which is subject to a protective trust and apply it in payment of the debts of a married woman, even though it may be for her benefit. Rather an interesting case occurred the other day where some ingenious person thought that that difficulty might be got over by asking the court to confer a power to use capital to pay the lady's debts under s. 57 of the Trustee Act of 1925. That section gives the court power to confer on trustees any power which the court thinks is of benefit to the beneficiaries under the trust. It is a very wide section, and it has been used very largely. The case in which that suggestion was put forward as a way out of the difficulty was *Re Mair* [1935] Ch. 562, which came before Mr. Justice Farwell. There, the testator had given the residue of his property as to one-third to his wife, and as to one-third to his daughter on protective trusts; that is to say, it was for her life or until she did some act whereby she could be deprived of the beneficial income, or any part thereof, and if there was a discretionary trust, then the wife of the testator and the daughter were persons who could benefit under the discretion. The daughter at the time of the application was aged sixty-nine, and I think was unmarried, and she apparently had debts which were worrying her. So the application was made to the court to confer power on her trustees to raise a sum out of capital to pay off her debts. Whether the court in fact exercised that discretion and conferred that power on the trustees does not appear in the report. I think it was adjourned into chambers; but the decision of the case was this: that if the court conferred this power on the trustees (and the court seemed to think it would find no difficulty in conferring it) and the trustees exercised the power of taking capital to pay the debts, that would not amount to a forfeiture of the daughter's life interest; it would be an exercise by the trustees of the powers under the settlement, because the powers are conferred by the court as if created by the settlement, and that exercise of the power would not cause a forfeiture of the life interest. So the case does point out a way in which the capital might be used to pay the daughter's debts by application to the court.

Another small point which arises under the same Trustee Act of 1925 is this: under s. 10 (3) power was given to trustees among other things to concur in schemes or arrangements. That is to say, where trustees hold shares in a company, they are given power to concur in schemes or arrangements under which they get various rights, and so on, which, no doubt, is very convenient. The words of the section, so far as they are material to this, are as follows: "Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement (*a*) for the reconstruction of the company; (*b*) for the sale of all or any part of the undertaking; (*c*) for the amalgamation of the company with another company, with power to accept securities of the reconstructed, purchasing, or new company." The case that arose on that is *Re Walker's Settlement* [1935] Ch. 567; 79 Sol. J. 362, where a rather unfortunately narrow construction was put upon that power. In that case the trustees held some shares in an electric light company, and there was a scheme which is quite usual, as I daresay you may know, among electric light companies and companies of that kind, under which several of the companies made an arrangement to get unity of control, which would save a good deal of expense. The scheme was this: a new company was to be formed, not to take over the undertakings of the various companies, but to buy not less than 90 per cent. of the shares of each of those electricity companies with a view to getting complete control into the one hand, and so getting unity of control. From a business point of view, I think, everybody for some years past would have described that as an amalgamation, because by means of the controlling interest in the shares the whole control came under the one board. But it was held by Mr. Justice Eve and the Court of Appeal that this did not come within the words of the section, and it would be difficult to make the words of the section apply, because the words of the section are these: "amalgamation of the company with another company." So although there may be said to be an amalgamation in this case of the businesses, as it were, there was no amalgamation of the company, because the company remained quite a distinct company, though its shareholding had been altered. It is a little unfortunate, because it is the sort of amalgamation that it is convenient for trustees to be able to concur in, but under the words of the section it would be difficult to hold that the section in fact applied.

I come now to certain provisions of the Act relating to wills. There are not many of them. I think the most important one is the section which enables a will to be made before marriage. You know that in the old days when a man was going to be married you always had to explain to him that he must execute his marriage settlement before the marriage, so that it should be made in consideration of the marriage, and he must execute his will after the marriage, because if he executed it even a few minutes before the marriage the subsequent marriage would revoke the will. So that amongst other things which had to be done a few minutes after the ceremony, the husband had to sign his will. It was often done in the vestry. So that with a view to getting over that, s. 107 of the Wills Act says this: "A will expressed to be made in contemplation of a marriage shall"—I am leaving out a few words—"not be revoked by the solemnization of the marriage contemplated." So that if a man wants to make his will a few months before his marriage he can state that he is making his will in view of his marriage with Miss So-and-so, and then it is not revoked by the solemnization of the marriage. There have been two decisions on that section. In the case of *Pilot* v. *Gainfort* [1931] P. 203; 75 SOL. J. 490, the facts were these: a man named Pilot in 1914 married, and his wife after seven years left him in 1921, and she was never heard of again. In 1924, that is three years after she had disappeared, he began to live with the plaintiff, Diana. They were living as man and wife. He did not, I suppose, dare to get married to her, because he did not know whether his wife was still alive, and in February, 1927, Pilot made a will in which he said this: "I hereby leave to Diana Pilot my wife all my worldly goods." At that time Diana was not Diana Pilot, and she was not his wife. In August, 1928, seven years having expired since his wife had disappeared, from the point of view of bigamy Pilot was free to marry Diana, and he did in fact marry the plaintiff, Diana. The question arose then whether this marriage had not revoked the will in which he had given Diana all his property. It would have been a most unfortunate thing if it had, and the Probate Division managed to see its way to say that that did come within the section. I think that decision really holds the record for benevolence, but it was really very satisfactory that the court could see its way to do it. The words of the section are these: "A will expressed to be made in contemplation of a marriage." Now you see what the will says: "I hereby leave to Diana Pilot my wife all my worldly goods." It was perhaps a straining of the language of the Act, but no doubt straining it in a very praiseworthy direction.

However, another case occurred a very short time ago which came before Mr. Justice Bennett, and he did not stretch it any further. That is the case of *Sallis* v. *Jones*, reported in THE SOLICITORS' JOURNAL for the 23rd November last, at p. 880. I do not think it is reported anywhere else at the moment. The facts there were these: Evan Jones died on the 17th November, 1934, and his daughters propounded a certain will which was dated 27th June, 1927. He had married a lady whose name was Annie Jones, and she as his widow claimed that that will had been revoked by his marriage to her. The dates were these: The will, as I have said was dated 27th June, 1297, and he married Annie on the 7th November, 1927. The will ended with these words: "I hereby declare that this will is made in contemplation of marriage." I do not know what was in the will; the report I have seen does not say; but I suppose that Annie Jones was not at any rate the chief beneficiary under the will, and it may be that when in the will made in June, he says it was in contemplation of marriage, he was contemplating marrying somebody else. But the court held that the will saying it was made in contemplation of marriage generally was not enough. The section says: "A will expressed to be made in contemplation of *a* marriage shall, notwithstanding anything in Section 18 of the Wills Act, 1837, or any other statutory provision or rule of law to the contrary, not be revoked by the solemnization of *the* marriage contemplated," and the learned judge held, no doubt rightly, that merely to say, "in contemplation of marriage" generally was not a compliance with the section, and accordingly the will of the 27th June had been revoked by his marriage to Annie in November, 1927.

On the Syllabus of the Lectures, I had set down as one of the subjects to deal with certain points in regard to enfranchised copyhold. Those, perhaps, are not of very great importance now, because the ten years under which certain provisions protecting the manorial incidents still run are very nearly expired, and I think in the time still left to me I will deal with certain of the questions which have been put on various matters, because certain of you have asked the questions, and I think the rest of you will be more interested in them than in certain cases on copyholds which have become very nearly obsolete.

One question which has been put to me is this—returning to the subject of restrictive covenants which I have been dealing with; I have been asked this: Can you get rid of a restrictive covenant binding land by granting a building lease? There is a lot to be said about that, because you will remember that if a person is granting a lease, it is not usual for the lessee to investigate the title. In fact, the Law of Property Act, s. 44 (2) re-enacting some earlier provisions, says where there is a grant of a lease the grantee of the lease is not entitled to call for the title to the freehold; and by another section of the Act, s. 44 (5), a person who does not investigate the title when he has no right to investigate it, is not to be deemed to have constructive notice of matters which he would have discovered if he had insisted on investigating the title which the Act gives him no right to investigate. So it seems that in removing the hardship which was created by the decision in *Patman* v. *Harland* a very well-known case, (1881), 17 Ch.D. 353; 29 W.R. 707, it may be that a new hardship has been created, and it does seem as if you could in fact get this state of affairs; a person buys a freehold plot of land subject to restrictive covenants against building: he thereupon makes a building lease to a building company: they do not investigate the title; they know nothing about these restrictive covenants; they get a legal lease, and so they are purchasers without notice, and so they could go on gaily and build in breach of the covenants. From the practical point of view I doubt whether it is often likely to arise. First of all it is no good trying to make a building lease to a company in which you are yourself interested as one of the directors, because in that case the company would have constructive notice of the restrictive covenant. But if you are dealing with a completely independent outside company or builder, I doubt whether the company would be so trustful as to take a building lease and build on the land without making careful inquiries as to whether the land was subject to restrictions, and therefore, in order to carry out the scheme, you would probably have to tell several untruths to get it carried out. But if you could grant a building lease to a company which did not investigate the title and did not know about the restrictions, it may be that in that way you could get clear of it, or the building company could. That, of course, only applies to the pre-1926 covenants. After that date covenants are registered as land charges, and the point does not arise.

Another question I was asked about these covenants was: What is the effect of the non-registration of the covenant before the registration of the land which is affected by the covenant? That is to say, there is a covenant entered into for the benefit of the land and binding another piece of land, but, before there is an entry on the register, the land which has the benefit of the covenant is conveyed to a purchaser. I think the answer to that is: it does not make any difference; the benefit of the covenant runs at law with the land, and has nothing whatever to do with notice. It is only the burden of the covenant which runs in equity and depends upon notice.

Then I was asked a question which, I think, is a very difficult one, as to whether when land has been sold in consideration of a chief rent, and there are covenants entered into

for repairs connected with the land, and then the chief rent is sold, whether the benefit of that covenant passes to the purchaser of the chief rent. That strikes me as a very difficult question. I have only been asked it quite a short time ago, and I think the best answer to it is that I really do not know; but, *primâ facie*, I should imagine that the benefit of the covenant would not run with the rent, because the covenant only runs with land. I doubt whether that would apply to a chief rent; but that is a difficult question, and perhaps, rather a very special one, and I do not want to tie myself really to one thing or the other.

Then there is a controversy on another point which has been discussed in some of the legal papers, and one of those attending the lectures has taken an interest in it, too. The question is this, and it is an interesting one, and not altogether easy: Supposing you have got a settlement in this, say: Land is settled on A for life with remainder to the daughters of A, as tenants in common in tail. Probably there would have been a first remainder to the sons, and, perhaps, there were no sons, and then it passes to the daughters as tenants in common in tail. Then, on the death of A, what happens? The land, in a sense, is still settled land, because it goes on as an estate tail to the two daughters; but as there are two daughters, they hold in undivided shares, and there are provisions of the Act which thereupon impose a trust for sale, and as soon as you get a trust for sale the land ceases to be settled land. But if you look at the specimen abstract which is Form 2 in the Sixth Schedule to the Act, there it provides or says that this has happened: That on the death of A the trustees of the settlement applied for special probate limited to the settled land, and then they made an assent vesting the land in themselves on trust for sale. The question is whether that is the proper course. It arises in this way: Under s. 36 of the Settled Land Act, which, I think, is obviously intended to cover a case of this kind, "If and when after the passing of this Act 'settled land'"—you will note that phrase—"is held in trust for persons entitled . . . under a trust instrument in undivided shares"—that is the case we have here—on the death of A the two daughters become entitled under a trust instrument in undivided shares—"the trustees of the settlement . . . may require the estate owner"—and then it says that the estate owner may include personal representatives—to "assent to the land vesting in them as joint tenants, and in the meantime the land shall be held on the same trusts" as if it had been vested in the trustees. Then it says, in sub-s. (2): "If and when the settled land so held in undivided shares . . . becomes vested in the trustees of the settlement, the land shall be held by them . . . on the statutory trusts." Now, of course, the statutory trusts are trusts for sale, and as soon as you get a trust for sale you cannot have settled land. So the problem is, when does the land cease to be settled land and become held on trust for sale, and is this a case where the trustees of the settlement, as suggested in the abstract, can apply for special probate limited to the settled land? The problem, although not quite in that form, did come before Mr. Justice Maugham, in *re Cugny's Will Trusts* [1931] 1 Ch. 305. I have refrained from dealing with that case because it seems to me to be rather a technical point, but as I have been asked questions about it, I will just explain what did happen in that case. There was a very similar state of affairs. There was a life tenant who died, and thereupon the property passed to certain persons. So that it was still, in a sense, settled, and yet there were undivided shares, so that the land was held in trust for sale, or would have to be under this section. The executors of the will of the tenant for life were the same people as the trustees of the settlement, so that the problem did not occur in its acute form. But, as a matter of fact, the executors took out probate; they got a grant of probate in the ordinary way, that is to say, general probate, and, so far as I remember, nobody seemed to bother very much as to what ought to be done so long as the court decided something; and Mr. Justice Maugham held that s. 36 of the Settled Land Act did, in that case, apply. The land was settled land under that section to the extent of enabling the trustees to claim to have the land vested in them, but he directed that the trustees, who, as executors, had taken out general probate, should assent to the land vesting in themselves on the statutory trusts, and that rather seems to suggest that it was not right under the specimen abstract that the trustees of the settlement should apply for special probate, because, immediately on the death, the land became subject to a trust for sale, the words of the section being, "and in the meantime the land shall be held on the same trusts as if it had been vested in the trustees," which means a trust for sale. I do not know that it matters a very great deal, because as soon as you have got probate granted you are entitled, under the decision in *Re Bridgett & Hayes' Contract* [1928] Ch. 163; 71 Sol. J. 910, to rely on that being correct, and therefore, if the course is adopted which was taken in *re Cugny's Will Trusts*, that the executors apply for general probate of the will, and then they assent to the property vesting in the trustees of the settlement, the proper course has been, at any rate, sufficiently carried out; and the advantage of it is that if in the Probate Division the executors simply apply for general probate, no difficulty will be raised, but if the trustees apply for probate of the settled land, the question will become acute as to whether they can do so in this particular case. So that the practice adopted in *re Cugny's Will Trusts* seems to be the simplest way of dealing with the matter, and I find that the general opinion among conveyancers I have consulted is that that is the proper way to do it.

Another question which has been put to me is this: Can you under the new Act have a provision or a covenant in a lease for the renewal of the lease, that renewal to take effect—the right of renewal to take effect—more than twenty-one years from the date of the lease? The section is a difficult one to construe, but what it says is this; it is s. 149 (3): "a term granted to take effect more than twenty-one years after the date of the instrument purporting to create it . . . is void." That is quite simple; where you have a deed by which somebody purports to grant a lease to-day to take effect more than twenty-one years after the date of the deed, it would be void. Then it goes on to say: "and any contract made after such commencement to create such a term shall likewise be void." What does "such a term" mean? If you read for the word "such" the previous words of the section, which is generally proper construction, you will find it is a term to take effect more than twenty-one years after the date of the instrument purporting to create it, and not a term to take effect "not more than twenty-one years after the date of the contract"; there, again, I understand that the opinion of conveyancers is that that does not prohibit putting into a lease a right of renewal which might be exercised more than twenty-one years from the date of the lease, but merely prevents the contract being valid, which is a contract to grant a lease which is to take effect more than twenty-one years from the date of the deed creating it.

One other provision which has some bearing on that is Schedule 15 of the Act of 1922, cl. 7, sub-cl. (2), because that provides that any covenant for the renewal of a lease for a term greater than sixty years is to be void. Now, if the Act contemplates that you may by a covenant for renewal provide for a new lease up to sixty years, it seems rather curious that you could not put a covenant for renewal into a lease if your lease is for more than twenty-one years to take effect at the end of the lease. So that, on the whole, it seems that you may still put a covenant for renewal into a lease at any time during the term, even though the term may be for more than twenty-one years.

That very nearly brings me to the end of my task, but with regard to manorial incidents of copyholds, I will just call your attention to two matters of practical importance. The first is this, that under the Act the manorial incidents may be

extinguished in one of two ways, and that, in any case, they become extinguished at the end of ten years from the passing of the Act; so they have all very nearly expired. There is still a chance of the lord claiming to have his compensation if he applies within another five years. Then, under certain sections, such as s. 130, it is provided: "Until the manorial incidents have been extinguished the same fines shall be payable on any transaction (formerly capable of being effected by a customary assurance) which would have been payable if the land had remained copyhold." That ceases as soon as the ten years are over, because all the manorial incidents will then have been extinguished. Again, there are provisions in s. 129 making a conveyance of land which had been copyhold void unless the conveyance has been produced to the steward, and he had to make a memorandum on the conveyance. But that, again, only applies so long as the manorial incidents remain unextinguished. So that at the end of this month this will also cease to exist.

The only other point I should like to call attention to on the effect of the Act on copyholds, is this: You must remember that, although they have been enfranchised under the Act, enfranchisement does not affect the right of the lord to mines, minerals, stone, gravel, and so on. I do not know whether it is generally appreciated that, supposing you have a person who is holding freehold land which was copyhold, he thinks it has been turned into freehold by the Act, and it may not occur to him, if he has valuable gravel on his land, that he cannot remove it without the consent of the lord of the manor. But the lord of the manor is not in a very strong position, because he cannot enter on the surface to remove it, and so, apart from agreement, the gravel has to remain where it is.

I am afraid I have cut the copyholds rather short. There are two or three decisions on the Act, but for the reasons I have given they have become rather out of date.

At the end of these lectures I must thank you all for having attended very carefully and attentively to the long series of lectures on a very difficult subject. (Loud applause.)

The PRESIDENT: Mr. Topham and Gentlemen—In bringing this series of lectures to a close, I think it is the wish of all of you that I should say how much we appreciate the way in which Mr. Topham has dealt with these lectures, the subject as we know, being not at all an easy one. We should also thank him for the way in which he has dealt with the numerous questions which have been put to him. The questions, you may be interested to know, have come not only from those attending the lectures, but from others who have read the reports which have been appearing in THE SOLICITORS' JOURNAL. This shows, I think, you will agree, the interest taken. You may remember that I said at the opening of the lectures that I thought the Association were justified in having arranged them. ("Hear, hear.") I should also like to associate myself with Mr. Topham, in saying how much I congratulate the audience on having attended regularly, and, so far as I could see, the rapt attention with which they have listened to the lecturer.

THE SOLICITORS' JOURNAL ask me to mention that they have decided to publish the lectures in book form. They tell me the book will be ready about the middle of January, the cost price being 7s. 6d.

I have heard it said that this Association is the only body that can hold a series of lectures successfully on the Law of Property Act. Be that as it may, using Mr. Topham's expression, I do not think I am putting "a benevolent construction" on the fact; but I think I may say as an actual fact we could not have run these lectures successfully without the help of Mr. Topham, and our thanks are due to him. ("Hear, hear.") I must exercise the Chairman's privilege of putting a vote of thanks to you, and I now do so, and I ask you to give it your acceptance in the usual manner. (Prolonged applause.)

Mr. TOPHAM: Mr. President, I thank you very much for your kind words. I can only say again it has been a great pleasure to me to give these lectures, and very largely because everybody in the hall throughout has paid such very careful attention and appeared to be so very interested in them. I know it is a subject in which some of the things are very intricate and difficult; for instance, some of the questions I have been dealing with this evening are subjects which might very well have bored you, and would, I am sure, if you had not taken a very great interest all through and tried very hard to assist me by listening very carefully to what I have said. I am very much obliged to you all. (Applause.)

Obituary.

MR. C. E. FARMER.

Mr. Charles Edward Farmer, formerly Senior Chancery Registrar, died on Monday, 23rd December, at the age of eighty-eight. He was educated at Eton, and, having qualified as a solicitor in 1872, he was appointed to a clerkship in the Chancery Registrar's Office. He succeeded to a Registrarship in 1889, and was Senior Registrar from 1912 until his retirement in 1920.

MR. L. CHADWICK.

Mr. Lloyd Chadwick, retired solicitor, of Warwick, died on Sunday, 8th December, at the age of seventy-five. Mr. Chadwick was admitted a solicitor in 1882. He was head of the firm of Messrs. Chadwick & Sons, solicitors, of Warwick, and was deputy borough coroner. He retired in 1929.

MR. R. HANCOCK.

Mr. Richard Hancock, retired solicitor, of Callington, died at Dawlish, on Saturday, 7th December, at the age of seventy-seven. Mr. Hancock, who was admitted a solicitor in 1886, was senior partner in the firm of Messrs. R. Hancock & Son, of Callington. He was a member of the first Parish Council at Callington in 1894, and was appointed treasurer of the first Urban District Council in 1901.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Thumb Mark Attestation of Will.

Sir,—Mr. Justice Langton has recently ruled in favour of a will executed by the testator (because of physical incapacity) by an inky impression of his thumbmark, such a course having been suggested by an ingenious and ingenuous curate on the strength of his experience in Afghanistan. Apparently this method of signing was regarded as marking a risky precedent.

But why? Not only is this quite *a*—if not *the*—recognised mode of signature heretofore in all Moslem countries, but it was so recognised in this country before handwriting became general; moreover, there is no peculiar virtue in the traditional cross marking, which would be equally effective if any other sign or symbol were used.

The real question upon which the court would require satisfaction is whether the witnesses can testify that the mark, whatever it be, were the genuine expression of a testator's wishes, he understanding the nature of the document he was thus executing.

Liverpool. J. A. HOWARD-WATSON.
7th December.

THE LAW OF PROPERTY ACTS, 1925.

A report of the last of the series of lectures on the Property Acts, 1925, given to the Solicitors' Managing Clerks' Association, by Mr. A. F. Topham, K.C., appears in this issue, beginning at p. 981. In response to numerous inquiries it has been decided to re-publish them in book form. A table of cases and an index will be added, and the proprietors of this journal hope to have the book ready in January. Orders should be sent addressed to The Solicitors' Law Stationery Society, Limited, 29–31, Breams-buildings, London, E.C.4.

To-day and Yesterday.

Legal Calendar.

23 December.—The life of William Jenney seems to have been divided between the successful practice of the law and the less successful pursuit of a feud with the famous Paston family. He was a brilliant and acute lawyer, enjoying an extensive practice, and though at one time royal favour inclined towards his rivals, his professional progress was not impeded. He took the degree of the coif in 1463, and was appointed a justice of the King's Bench in about 1481. Although he died on the 23rd December, 1483, he served under three sovereigns: Edward IV, Edward V and Richard III. His grandson became a judge under Henry VIII.

24 December.—On the 24th December, 1857, John Thompson, a tailor, was tried at Glasgow for murdering Agnes Montgomery, his employer's sister-in-law. At first, when the poor girl had been found dying in her room with fixed eyes and frothing mouth, no one seems to have suspected foul play, though the smell of prussic acid was in the air. It was only the artless prattle of a child of three who had seen the prisoner give his victim some poisoned beer that caused the body to be exhumed, but the little thing could not be a witness and the evidence was purely circumstantial. The verdict was "Guilty," but the man's only reason for his crime seems to have been the fatal fascination of poisoning for its own sake.

25 December.—Christmas often brought trouble to the Inns of Court. Thus, in 1663, at Lincoln's Inn, "for the future prevention of the evills and mischiefes that have hereby heretofore happened to the greate dishonour of God debauchinge and corruptinge of youth . . . as alsoe the scandall of the government of this Societye:—Itt is thought fitt and Ordered that none of the Fellowes of this Societye shall henceforward in Christmasse time, or any other times, play att any cardes or dice with any strangers, either in the Hall, Butterye or Counsell Chamber, upon payne of expulsione from the House, nor that any strangers be permitted or suffered amongst themselves to play there, as aforesaid."

26 December.—When Coke was promoted to the King's Bench in 1613, Sir Henry Hobart, the Attorney-General, succeeded him as Chief Justice of the Common Pleas, which office he held for the rest of his life, though both when Lord Chancellor Egerton was failing in health and when Bacon fell into disgrace, he seemed to be in the running for the prize of the Great Seal. He died at his house at Blickling, in Norfolk, on the 26th December, 1625, very shortly after the accession of Charles I, mourned as "a most learned, prudent, grave and religious judge."

27 December.—On the 27th December, 1881, Lord Justice Lush died at his house at Regent's Park, having sat in the Court of Appeal only a little over a year. About a month before, he had been taken ill during the hearing of a case, and he had never been able to resume his judicial duties. From 1865 until his promotion he had been a Justice of the King's Bench. No judge was ever more popular with the bar as well as with juries.

28 December.—On the 28th December, 1644, Lord Chief Justice Bankes died at Oxford. He was buried in Christ Church Cathedral.

29 December.—Lord Chief Baron Parker presided in the Court of Exchequer for thirty years, only resigning at the age of seventy-seven in the summer vacation, 1722. He was granted a pension of £2,400 and a place in the Privy Council. He was a good judge. The great Lord Hardwicke considered that "Parker was in every way deserving and has gained a very high character for ability and integrity." Lord Mansfield said of his less distinguished successor: "The new Chief Baron should resign in favour of his predecessor."

The Week's Personality.

"Sir John Bankes was born at Keswick, of honest parents, who, perceiving him judicious and industrious, bestowed good breeding on him in Gray's Inn, in hopes he should attain to preferment wherein they were not deceived." After his call to the Bar in 1614, he seems to have begun by devilling briefs, since we are told, "for some years he solicited suits for others, thereby attaining great practical experience." Within and without his Inn, he made steady progress, and one of his contemporaries noted, "Lord Bankes, the Attorney-General, hath been commended to his majesty—that he exceeds Bacon in eloquence, Chancellor Ellesmere in judgment, and William Noy in law." How high stood his reputation may be judged from the fact that when the civil dissensions of the reign of King Charles broke out, his prominent part in the Star Chamber prosecutions and the Ship Money case did not make him obnoxious to the Parliament. He urged the need of frankness and compromise on both sides, foreseeing that "if we should have civile wars it would make us a miserable people." When the Civil War did break out, he was wholeheartedly loyal to the King. He gave ample proof of his devotion, and his castle was heroically defended by his wife against a strenuous siege. He died in 1644, ordering by his will, "that his body should be buried under some plain monument . . . and after an epitaph mentioning the severall places he had held. This Motto to be added: '*Non nobis, Domine, non nobis, sed Nomini Tuo da gloriam.*'"

More and the Irish.

Little that is English has the good fortune to enjoy Irish veneration, but Sir Thomas More, L.C., has long been an exception. Only the other day a man tried in Dublin for murder escaped with a verdict of manslaughter on the ground, apparently, that had More been in his position he, too, would have killed his man. Learned counsel and learned judge indulged in some very quaint theorising on the probable reactions of the great Chancellor to the problems of homicide, justifiable and otherwise. The Hibernian reverence for More in matters of law is no new thing. Once Lord Brougham was startled by a strange Irishman who applied to him in court to institute proceedings against members of the Government for not answering his letters. The Chancellor said he could not interfere but the man insisted: "Oh, by the powers, it's your honour can do the same if you like." Guessing that he was mad, Brougham pretended to humour him, listened to his claim to have discovered a cure for cholera, and promised that his letters should be answered. "Long life to your honour!" shouted the lunatic. "May you long live to sit in the sait of Thomas More!" Accounts of the scene got into the Press, and next day the madman was back in court protesting that one reporter was a blockhead. "He has made me say Mr. Thomas Moore for Sir Thomas More. Sure everybody knows that little Tommy the poet never sat on that sait." Another reporter who had offended him he challenged to a duel.

Harmony in the Temple.

The recent ceremony in Inner Temple Hall, when, in the presence of the Benchers of both the Societies of the Temple, the Archbishop of Canterbury, himself a Bencher of the Inner, conferred a Lambeth degree of Doctor of Music on Professor G. T. Thalben-Ball, the organist of the Temple Church, emphasises the harmonious relations now prevailing there. It was not ever so, for one of the greatest disputes between the Inner Temple and the Middle was The Battle of the Organs, which divided not only the lawyers, but the whole town. In 1682, the two greatest organ builders of the day, Renatus Harris and Bernard Schmidt, a German, known in England as Father Smith, were invited to compete for the honour of making the Temple Church an organ of superlative excellence. Fourteen months later, the instruments were provisionally

installed for trial, Purcell being chosen to perform on Smith's, and Draghi, the Queen's organist, on Harris's, but so perfect were both that the committee could not make up its mind to give judgment for either. Discussion everywhere turned to violent wrangling; accusations of corruption were thrown about; some partisans of Harris cut the bellows of Smith's organ; swords were even drawn. Then the Middle Temple declared for Smith, and the Inner objected. After years of quarrelling, the Middle carried the day in 1688. Harris cut his unsuccessful organ in two and sent half to Dublin Cathedral and half to St. Andrew's, Holborn.

Notes of Cases.

Court of Appeal.

Commissioners of Inland Revenue *v.* Ramsay.

Lord Wright, M.R., Romer and Greene, L.JJ.
5th and 6th December, 1935.

Revenue—Sur-tax—Dental Surgeon's Practice—Purchase Price—Initial Cash Payment and Annual Percentage of Profits for Fixed Number of Years—Whether Payments Capital or Income—Whether Admissible as Deduction in Computation of Tax.

Appeal from a decision of Finlay, J. (79 Sol. J. 626).

In September, 1932, R agreed with the widow and sole executrix of a deceased dental surgeon to purchase his practice with goodwill and equipment for what was stated to be a primary price of £15,000, an initial payment being made of £5,000 in cash. Thereafter R was to pay the widow annually for ten years, in respect of the balance of the purchase price, one-quarter of the net profits of the practice, even if those profits aggregated more than the £10,000 balance. If they came to less the widow was to accept them in full satisfaction. If R died before he had paid £5,000 of the balance the widow was to take the proceeds of a life insurance policy for £5,000 which R had effected and assigned to her as security. In the first year a quarter of the net profits amounted to £886, and R paid this to the widow. Finlay, J., held that this was not an instalment of a capital sum, but an annual sum diminishing R's income and admissible as a deduction by him for the purposes of computing sur-tax. The Crown appealed.

Lord Wright, M.R., allowing the appeal, referred to *Foley* v. *Fletcher*, 3 H. & N. 769, at p. 779, *Chadwick* v. *Pearl Life Insurance Co* [1905] 2 K.B. 507, at p. 514, and *Secretary of State in Council of India* v. *Scoble* [1903] A.C. 299, at p. 303, and said that it was hard to distinguish between an agreement to pay a debt by instalments and an agreement to make annual payments for a fixed number of years. There were no hard and fast rules to be applied as a matter of course to any particular case. It could not be said that if the payments fluctuated according to circumstances this was necessarily inconsistent with their being instalments. In what he said in *Jones* v. *Commissioners of Inland Revenue*, 7 T.C. 310, Rowlatt, J., was clearly dealing with the facts of that particular case and not stating a universal proposition. In each case consideration must be given to the particular transaction and the contract which it embodied. A creditor who had sold property for a particular price might agree to accept fluctuating payments. Here, though there was no express obligation on the respondent to carry on business for the next ten years there was an implied term to that effect. This was not an annuity. A capital lump sum of £15,000 had been agreed for the sale of the property, and this was none the less so because it was to be paid by instalments and because in its discharge the vendor might have to be content with less. The figure was not otiose but pervaded the whole contract. The payment of £886 was therefore in the nature of capital and the respondent could not deduct it.

Romer and Greene, L.JJ., agreed.

Counsel: *The Attorney-General* (Sir Thomas Inskip, K.C.) and *R. Hills*; *T. N. Donovan.*

Solicitors: *Solicitor of Inland Revenue*; *Arthur Benjamin & Cohen.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Amos *v.* Hops Marketing Board.

Goddard, J. 31st October, 1935.

Hops—Marketing Scheme—Quota—Extra Quota to "Owner-Occupier" in certain Circumstances—Who is "Owner-Occupier"—Hops Marketing Scheme, para. 46 (*c*), Proviso (*a*).

Appeal by case stated against an award made by an arbitrator under para. 63 of the Hops Marketing Scheme.

The appellant was the tenant of Gosmere Farm, Faversham, under a lease of twenty-one years containing the usual farming covenants. He was the owner in fee simple of another farm called Pevington Farm. In 1931, as the result of requests from English Hop Growers Limited, a voluntary society, the appellant dug up his hops on Pevington Farm. By para. 46 (*c*) of the Hops Marketing Scheme, a quota was allotted to every hop-grower based on his production of hops for the five years ended in 1932, and every hop-grower was entitled to demand from the Hops Marketing Board a better price for hops grown under a quota than for hops not so grown. By proviso (*a*) to para. 46 (*c*), where a hop-grower occupies more than one farm he may, as "owner-occupier" of a farm on which he grows hops, add to his quota an amount in respect of other farms occupied by him on which he ceased to grow hops before 1932. The question was whether the appellant was an "owner-occupier" of Gosmere Farm within the meaning of proviso (*a*), so as to be entitled to make an addition to his quota in respect of the hops dug up at Pevington Farm in 1931. The arbitrator held that he was not.

Goddard, J., said that, by para. 46 (*c*) of the scheme, each farm was given a basic quota, and that, by proviso (*a*) to the paragraph, certain classes of persons occupying two farms, on one of which the hops had been dug up before 1932, received an additional quota in respect of the hops which had been dug up. The privilege of receiving the extra quota was given by the proviso to "owner-occupiers." The question was what that expression meant. It had been argued for the appellant that, by s. 1 of the Law of Property Act, 1925, only two estates were recognised in land, the fee simple and the term of years, and that therefore, "owner" meant either freeholder or leaseholder. He (his lordship) did not believe that contention to be sound. "Producers," which under the scheme meant those who grew English hops, were the only persons entitled to a quota. No one could grow hops unless he occupied the land on which he grew them. An occupier of the land must be either an owner in fee simple or a leaseholder. If the expression "owner-occupier" included both those classes, it would exclude nobody, and the word "occupier" alone might have been used equally well. For that reason the phrase must, in his (his lordship's) opinion, refer to a producer who owned the land in fee simple, and accordingly it did not include a leaseholder. The appeal must therefore be dismissed.

Counsel: *Eric Sachs*, for the appellant; *L. C. Graham-Dixon*, for the respondents.

Solicitors: *Field, Roscoe & Co.*, agents for *Hallett, Creery & Co.*, Ashford; *Ellis & Fairbairn.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

The American group in The Hague Court of Arbitration have nominated Professor Manley O. Hudson and Professor Victor Bruns to succeed Mr. Frank B. Kellogg and the late Dr. Walther Schücking as Judges of the Permanent Court of International Justice.

Silcock & Sons *v.* Green.

Charles, J. 2nd, 3rd and 4th December, 1935.

Local Authority—Compulsory Purchase— Land completely occupied by partially erected Building—Whether Part of Land and Building can be Compulsorily Purchased.

The plaintiffs, a firm of builders, in September, 1934, entered into a written contract with the defendant for the erection by them of a building upon land owned by the defendant in Stepney. The plaintiffs began work on the building in October. On the 1st November, 1934, the Stepney Borough Council, acting under powers granted by the Metropolitan Paving Act, 1817, served on the defendant a written notice to treat for the sale by her to them of a portion of the land on which the plaintiffs had begun to erect the building. Thereupon the defendant wrote to the plaintiffs informing them of the action taken by the borough council and instructing them to discontinue the building operations on the ground that it had become impossible for the contract to be carried out and that the object contemplated by it had been frustrated. The plaintiffs having already expended labour and materials in their building operations accordingly sued the defendant for damages for repudiation of the contract. The defendant counter-claimed £400 which she had paid under the contract, the grounds of counter-claim being an alleged failure by the plaintiffs to give certain notices which they were bound by statute or by the terms of the contract to give.

Charles, J., said that it had been argued for the defendant that she was bound in law to accept the notice to treat and that that took away the basis of the contract and frustrated it. The value of that argument depended on the view which he (his lordship) took of the notice to treat. If it was good, it might or might not be that it was sufficiently unforeseen to operate as a frustration of the contract. If the parties could reasonably have foreseen it, the doctrine of frustration would not apply. The policy of the law was against frustration. The defendant could have contended as against the borough council that they had no right to take part of the partially-erected building. The cases on the subject referred to completed buildings. He (his lordship) found as a fact that the contemplated purchase by the council of a portion of the building would leave a truncated structure incapable of fulfilling the purpose for which the building had been designed. *Gordon* v. *Vestry of St. Mary Abbott's, Kensington* [1894] 2 Q.B. 742, and particularly the words of Cave, J., at pp. 558-559, and *Gibbon* v. *Vestry of Paddington* [1900] 2 Ch. 794, had decided that there was power to buy compulsorily part of a completed building only where no substantial alteration of the character of the building would be involved. He (his lordship) felt bound to follow those cases. The new point was that he was for the first time applying to a partially erected house the law expressed in those cases to be applicable to completed houses. He came to the conclusion, therefore, that the notice to treat was bad. Another reason, although not the basic one, for that conclusion was that the notice, by its terms, referred only to land. The notice being bad, there was no frustration of the contract and the plaintiffs were entitled to damages and to judgment on the counter-claim.

Counsel: *Serjeant Sullivan*, K.C., and *Harold B. Williams* for the plaintiffs; *J. W. Morris*, K.C., and *Arthur H. Forbes* for the defendant.

Solicitors: *Longhurst & Butler*; *Forbes & Son.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

The results of the Examinations held in November by the Society of Incorporated Accountants and Auditors in London, Manchester, Cardiff, Leeds, Glasgow, Dublin and Belfast, have just been published: 838 candidates sat for the examinations, and of these 366 were successful; fourteen candidates were awarded honours.

Ankers *v.* Bartlett.

Lord Hewart, C.J., Humphreys and Singleton, JJ. 5th November, 1935.

Gaming—Place of Refreshment—Lawful Game involving Skill played on Premises—"Any Gaming whatsoever"—Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 44.

Appeal, by case stated, from a decision of Middlesex Quarter Sessions.

The respondent kept certain premises as a place where refreshments were sold and consumed within the meaning of the Metropolitan Police Act, 1839, s. 44. On the premises was a machine for the use of customers. When pennies were placed in a slot, a crane within the machine was set in motion and travelled over various articles, such as electric torches, ashtrays, etc. To the crane were fitted grappling irons which opened as they were lowered, closed as they reached the level of the articles, and were then drawn up. Any article seized and retained by the irons was ejected by the machine and became a prize. If nothing was seized, the player lost the pennies which he had inserted. A handle was fitted to the machine by which, before the pennies were inserted, a player could move the crane so that it was suspended over the front, back or middle of the area containing the articles. Once the crane had been set in motion by the insertion of the pennies, the player had no means of influencing its movements. In September, 1934, police officers observed two persons playing on the machine. In October, 1934, they observed two other persons. The handle was never operated; nor was any prize won. In November, 1934, informations were preferred against the respondent by the appellant, for that he, in September and October, 1934, being the keeper of certain premises, did knowingly permit gaming therein contrary to s. 44 of the 1839 Act. The defendant having been convicted on each information, and fined, appealed to quarter sessions, where it was contended for him (1) that playing with the machine was not gaming within s. 44 of the Act; (2) that, as the playing involved the use of skill, no offence was committed; (3) that s. 44 did not make unlawful the playing of a lawful game in a place to which the section applied; and (4) that cases decided under the Licensing Act did not apply to places where refreshments were sold. For the informant it was contended (1) that playing with the machine was gaming within the meaning of s. 44; (2) that it was immaterial for the purpose of the offence charged whether the use of skill was or was not involved; and (3) that where a game was played for money or money's worth upon premises within s. 44, there was an offence within the section. Quarter sessions, by a majority, found that skill was necessary to operate the machine, and, applying the principle of *Davis* v. *Parker* [1931] 2 K.B. 210, quashed the convictions. The informant appealed.

Lord Hewart, C.J., said that the justices had considered the wrong question. The question was not whether operating the machine imported skill, but whether it was "gaming" within the meaning of s. 44 of the Act of 1839. The words used were "any unlawful games or any gaming whatsoever." "Any gaming whatsoever" must, unless it were a mere tautology, include lawful as well as unlawful games. The intention of the section was to prevent disorderly conduct in any place of public resort, and, in order to give effect to that intention, it prohibited, *inter alia*, gaming in such a place. The house in question was one to which the section applied. As to whether playing with this machine was gaming, Wills, J., in *Dyson* v. *Mason* (1889), 22 Q.B.D. 351, at p. 356, said: "It seems to me to have been held, and rightly held, that playing any game for money is gaming. That is so according to the ordinary use of language, and there are many authorities in support of the proposition." The appeal must be allowed and the case remitted to the justices with a direction to try the right question.

Humphreys and Singleton, JJ., agreed.

COUNSEL: *Vernon Gattie*, for the appellant; *Sir Henry Curtis-Bennett*, K.C., and *G. D. Roberts*, for the respondent.

SOLICITORS: *Wontner & Sons; G. B. Howard & Macarthur.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* Peckham.

Lord Hewart, C.J., Humphreys and Singleton, JJ.
11th November, 1935.

EVIDENCE—TWO INDICTMENTS—TRIAL ON ONE—ADMISSION OF EVIDENCE RELEVANT ONLY TO OTHER—PRISONER'S PREVIOUS RECORD—INADVERTENT STATEMENT BY WITNESS—STATEMENT PREJUDICIAL TO PRISONER—DUTY OF COURT.

Appeal against conviction.

On the 2nd October, 1935, the appellant was convicted at Dorset Quarter Sessions of stealing a number of fowls, and was sentenced by the deputy-chairman to eighteen months' imprisonment with hard labour. There were two indictments. The first charged the prisoner alone with stealing, and alternatively with receiving, a number of fowls on a certain date. The second, which contained four counts, charged him together with another person with similar offences with regard to other fowls on other dates. The prisoner, having pleaded "not guilty" to both indictments, was then tried on the second, and evidence was inadvertently admitted which related only to the first indictment. During the trial, a witness for the prosecution on being asked whether he had been to the prisoner's house replied, "Only once, when he" (meaning the prisoner) "was in prison." Counsel for the prisoner, having objected, applied to have the trial begun again before a different jury. The application was refused, and no further reference was made during the trial to the witness's statement. The prisoner having been convicted, appealed.

LORD HEWART, C.J., said that the trial had clearly proceeded when neither the deputy-chairman, nor the clerk of the peace, nor any of the counsel involved had known what the appellant was really charged with. He had first been called upon to plead to both indictments, but had been given in charge to the jury on one indictment only. The trial had then proceeded for some time on the footing that all the witnesses who could give evidence on one indictment only were available to give evidence on the other. When the attention of the court had been called to the matter, the deputy-chairman had told the jury to "wash out of their minds" certain of the evidence which they had heard. With regard to the prejudicial statement made by the witness, it might, in particular cases, be unnecessary to refer in summing-up to such a statement. But here counsel had applied to have the trial begun afresh. It was in those circumstances that the deputy-chairman had refrained from even alluding to the matter when summing up. In the opinion of the court, where a statement as to a prisoner's previous record was inadvertently made from the witness-box to his prejudice, and his counsel applied for the trial to be begun again before another jury, the trial ought to be begun again. It was, however, enough for the purposes of this appeal that there had been at the hearing of the one indictment a misreception of evidence relevant only to the other, which misreception was fatal to the conviction. From this it followed that counsel for the prosecution should always inform themselves of the actual indictment before opening the case. The appeal would accordingly be allowed.

HUMPHREYS and SINGLETON, JJ., agreed.

COUNSEL: *F. E. Hodgson*, for the appellant; *W. Maitland Walker*, for the Crown.

SOLICITORS: *The Registrar of the Court of Criminal Appeal; The Director of Public Prosecutions.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

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Mr. Thomas Kerr Anderson, LL.B., barrister-at-law, of Richmond, Surrey, left £11,320, with net personalty £11,126.

Rules and Orders.

THE COUNTY COURTS (ALTERATION OF NAMES) ORDER, 1935, DATED DECEMBER 5, 1935.

I, Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, by virtue of Section 4 of the County Courts Act, 1888 * as amended by Section 9 of the County Courts Act, 1924,† and of all other powers enabling me in this behalf, do hereby order as follows :—

1. The County Court of Anglesey held at Holyhead, Llangefni and Menai Bridge shall be held by the name of the County Court of Anglesey held at Llangefni, Holyhead and Menai Bridge.

2. The County Court of Cornwall held at Falmouth and Truro shall be held by the name of the County Court of Cornwall held at Truro and Falmouth.

3. The County Court of Derbyshire held at Wirksworth and Matlock shall be held by the name of the County Court of Derbyshire held at Matlock and Wirksworth.

4. The County Court of Kent held at Tenterden and Cranbrook shall be held by the name of the County Court of Kent held at Cranbrook and Tenterden.

5. The County Court of Lincolnshire held at Brigg and Scunthorpe shall be held by the name of the County Court of Lincolnshire held at Scunthorpe and Brigg.

6. The County Court of Northamptonshire held at Thrapston and Oundle shall be held by the name of the County Court of Northamptonshire held at Oundle and Thrapston.

7. The County Court of Pembrokeshire held at Pembroke Dock, Narberth and Haverfordwest shall be held by the name of the County Court of Pembrokeshire held at Haverfordwest, Pembroke Dock and Narberth.

8. The County Court of Suffolk held at Diss and Eye shall be held by the name of the County Court of Suffolk held at Eye and Diss.

9. This Order may be cited as the County Courts (Alteration of Names) Order, 1935, and shall come into operation on the 1st day of January, 1936, and the County Courts (Districts) Order in Council, 1899, as amended,‡ shall have effect as further amended by this Order.

Dated the 5th day of December, 1935.

Hailsham, C.

* 51 & 52 Vict. c. 43. † 14 & 15 Geo. 5. c. 17.

‡ S.R. & O. 1899, No. 178, printed as amended to 1903, S.R. & O. Rev. 1904, III, County Court, E., p. 1. For subsequent amendments *see* "Index to S.R. & O. in Force, June 30, 1933," at pp. 190-3, and S.R. & O. 1933, pp. 541-3; 1934, I, pp. 255-9 and 1935, Nos. 364 and 678.

THE MEDWAY (SHELL-FISH) REGULATIONS, 1935, DATED DECEMBER, 11, 1935, MADE BY THE MINISTER OF HEALTH UNDER SECTION 130 OF THE PUBLIC HEALTH ACT, 1875 (38 & 39 VICT. C. 55) AS AMENDED BY THE PUBLIC HEALTH ACT, 1896 (59 & 60 VICT. C. 19) AND THE PUBLIC HEALTH (REGULATIONS AS TO FOOD) ACT, 1907 (7 EDW. 7. C. 32). [S.R. & O. 1935. No. 1221. Price 1d. net.]

Societies.

The Solicitors' Managing Clerks' Association.

THE DUTIES AND LIABILITIES OF DIRECTORS.

At a meeting of this Association held in Lincoln's Inn Old Hall on 13th December, the chair was taken by Mr. Justice Farwell, and Mr. F. RAYMOND EVERSHED, K.C., delivered a lecture on the duties and liabilities of directors.

Since the new Act, he said, it was necessary (by s. 139) that public companies have at least two directors. The subject was of obvious importance, and particularly to solicitors' managing clerks, who had both the duty of keeping the Board straight, having regard to the technicalities of the situation, and the more responsible duty of advising the Board generally. Good advice had often been given because in the mind of the solicitor what was suggested seemed right or wrong. The most valuable quality in the successful adviser to a company was good judgment. A good jumping-off place for such a lecture as this was the valuable judgment of Romer, L.J., in the well-known *City Equitable Case* [1925] Ch. D., at p. 426. Mr. Evershed read passages from this judgment indicating that directors could not be wholly regarded as trustees, as their duties varied from company to company, and the nature of the business must be ascertained in each case. A director must show some degree of skill and diligence. The learned judge had laid down four propositions : (1) a director need not exhibit a greater degree of skill than might reasonably be expected from a person of his knowledge and experience ; (2) a director was not bound to give continued attention to the affairs of the company ; (3) in respect of duties which, consonant with the articles, might be left to some other official, a director, in the absence of any grounds for suspicion, was justified in trusting that official to be honest ; (4) a director himself must at all times act honestly.

A fundamental difference between a director and a trustee was that the director did not usually have vested in him property in which the company had a beneficial interest. Moreover, a trustee could, by a fairly simple process, ask the help of the court as to what he should do if he were in doubt, but the business affairs of a company could not wait while a director took opinions. Nevertheless, in certain circumstances, the duties of a director became analogous with those of a trustee. The truth lay in the fact that the problem was not to consider the abstract relationship between a director and a company, but rather to consider the relationship in any one particular transaction between, on the one hand, Mr. A and Mr. B, directors, and, on the other, the company concerned.

DIRECTORS AS TRUSTEES.

If it was found that the property of the company was vested in the directors, then they did, in effect, become trustees. This was exemplified in the Canadian case of *Cook* v. *Deeks* [1916] 1 A.C. 554. Here three out of four directors of a company had thought it good to attempt to secure a contract in the construction of the Canadian Pacific Railway. They had, in fact, obtained a shore line contract and had vested it in another company incorporated by them for the purpose, excluding their fourth co-director, Mr. Cook. Cook had then claimed to make them account for their profit in respect of this contract and had succeeded, because the contract, when obtained, had been the property of the company in that they, as directors, had used their knowledge, influence and experience to get it. They could not therefore withhold it from their own company. The distinction was further pointed by a case in the opposite sense : *Burland* v. *Earle* [1902] A.C. 83. Here Burland had bought a business entirely on his own responsibility, not acting as a director or agent of the company of which Earle was also a member. It had been held that he owed no duty to the company and was quite justified in selling the business to the company at a profit. In any such case the point to be considered was whether the director had acquired the property while acting as a director or taking advantage of his position.

Another example in which directors might be held to be trustees was in the exercise of their powers—for example, the power to increase capital. In *Purcy* v. *Mills* [1920] 1 Ch. 77, there had been a feud between two rival parties in the company and the directors, perhaps, quite rightly, had been anxious to ensure their control, but had not had a majority of shares. They had therefore issued fresh shares to themselves and their friends. It had been held that such a transaction was a breach of their duties, because directors must exercise their powers as trustees of the company, meaning thereby the whole body of shareholders. The majority of shareholders could run a company as badly as they liked ; that was their privilege, and the directors had no right to make use of their powers to defeat the majority of shareholders. Similar cases arose in respect of directors' rights to refuse to register transfers of shares. In private companies the articles often allowed the directors to refuse to register a transfer in favour of a person of whom they did not approve. The Court would not look into matters of purely domestic management, and if the directors kept their mouths shut and merely said they did not approve of the individual, nothing could be done. If, however, they could be persuaded to give reasons, it might be possible to restrict their right to refuse, because it must not rest on such things as a belief in their own policy or a desire to prevent increase of the voting strength of the opposition.

An interesting point sometimes arose when it was found that a majority shareholder had no right to vote because he had not held his shares for a period stipulated in the articles. Very often it was the majority shareholder's widow who was in this position. The directors might then exercise their right of calling a meeting at a time which excluded the vote of the majority shareholder. Here, again, the truth was that in exercising any power vested in them the directors' duty was to the whole body of shareholders and not to any particular section. In those respects the directors were trustees for the whole body.

They were not, however, trustees for any individual shareholder, as was shown in *Percival* v. *Wright* [1902] 2 Ch. 421. In this case the board of directors had quite properly determined to sell the company's shares on a particularly advantageous basis. It happened that one of the shareholders, not knowing of this, had wished to dispose of his shares and had offered them to a director, who had gladly bought them at the price asked. When the shareholder heard of the profit the director was going to make he had attempted to make him

account for it but had failed; the director had no fiduciary relation to any particular individual.

The duties of directors could not be considered without some reference to the power on which they depended The directors were given certain duties and in the performance of those duties they could not be interfered with by the general body of the shareholders. If a general meeting passed a resolution cancelling a resolution of the directors then the shareholders' resolution was entirely inoperative. The directors could only be interfered with by a special resolution altering the articles (cf. *Salmon* v. *Quin and Axton* [1909] 1 Ch. 311). Directors, in conducting the business of the company, must consider the memorandum of association, but at the same time they could not perform their duties merely by reading that document, but must exercise their discretion. This had been pointed out by Mr. Justice Eve in *Lee* v. *Behrens* [1932] 2 Ch. 46, where the directors had decided to give an annuity to the widow of a managing director. The learned judge had said that it was not enough to say that the memorandum gave them power to give pensions; they must always consider if a particular pension was desirable in the interests of the company or not. In this case he thought that it was not, and their resolution was therefore invalid although it seemed to be within the terms of the memorandum. Another point on which questions sometimes arose was the duty of a director who was merely a nominee, as, for instance, when one company held all the shares in another. Even so, the director could not rest on the fact that the person who appointed him held 100 per cent. of the shares, but must realise that he was responsible to the corporation as a whole and not to any individual corporator at any particular time (Fletcher Moulton, L.J., in the *Gramophone and Typewriter Co.* v. *Stanley* [1908] 2 K.B., at p. 99).

It was a truism to say that directors must meet, but it must be remembered that a company was entitled to the benefit of a deliberative Board. There was a case on record where one of two directors had decided to have no more meetings, but the other wished to continue. He had, therefore, met his colleague at the station and walked down the platform with him proposing resolutions and declaring them carried by his casting vote. Further, minutes must be kept; s. 120 made this a statutory duty, and their absence might prove a great disadvantage when a difficulty arose later. The legal adviser to a company must also determine those things that had to be filed with the Registrar of Companies, and there had been some change in them since 1929. Any change affecting the property acquired by the company, even though already existing at the time of its acquisition, must now be registered. Moreover, any resolutions which increased the capital of the company, or altered it by subdividing or consolidating it, must also be registered. In considering the presence of a quorum it was necessary to remember that directors who were interested in any particular matter did not count (*North Eastern Insurance Company* [1919] 1 Ch. 198).

Parliamentary News.

Progress of Bills.

House of Lords.

Bridge of Allan Gas Order Confirmation Bill.
Royal Assent. [20th December.
Campbeltown Harbour, Water and Gas Order Confirmation Bill.
Royal Assent. [20th December.
Coinage Offences Bill.
Read First Time. [19th December.
Dundee Corporation Order Confirmation Bill.
Royal Assent. [20th December.
Edinburgh Corporation Order Confirmation Bill.
Reported [20th December.
Expiring Laws Continuance Bill.
Royal Assent. [20th December.
Government of India (Reprinting) Bill.
Royal Assent. [20th December.
Judiciary (Safeguarding) Bill.
Read Third Time. [19th December.
National Trust for Scotland Order Confirmation Bill.
Royal Assent. [20th December.
Public Works Loans Bill.
Royal Assent. [20th December.
Railways (Agreement) Bill.
Royal Assent. [20th December.
Rothesay Corporation Gas Order Confirmation Bill.
Royal Assent. [20th December.

House of Commons.

Air Navigation Bill.
Read First Time. [19th December.
Crown Lands Bill.
Read First Time. [20th December.
Edinburgh Corporation Order Confirmation Bill.
Read Third Time. [20th December.
Education Bill.
Read First Time. [19th December.
Education (Scotland) Bill.
Read First Time. [19th December.
Land Registration Bill.
Read First Time. [20th December.
Petroleum (Transfer of Licences) Bill.
Read First Time. [19th December.
Sugar Industry Reorganisation Bill.
Read First Time. [20th December.
Unemployment Insurance (Agriculture) Bill.
Read First Time. [19th December.

Questions to Ministers.

COURTS OF SUMMARY JURISDICTION (CHIEF CONSTABLES).

Mr. MANDER asked the Home Secretary how far it is the practice for chief constables to occupy a seat on the bench or beside the clerks of the justices in the courts of summary jurisdiction; and whether this practice has the approval of the Home Office.

Sir J. SIMON: Chief constables, of course, exercise a function which is quite distinct from that of the judiciary and take no part in the deliberation or decision of magistrates. I feel sure that a chief constable, if present in court, always endeavours to take up a position which leaves no room for doubt on this point. [19th December.

MARRIAGE LAWS.

Lieut.-Colonel MOORE asked the Secretary of State for Scotland whether he is yet in a position to state the terms of reference and personnel of the committee of inquiry set up to examine the marriage law of Scotland.

Sir G. COLLINS: Yes, sir. The committee has now been appointed. The terms of reference are:

"To enquire into and report upon the law of Scotland relating to the constitution of marriage and to recommend what changes, if any, are desirable."

The members of the committee are as follow:—

The Right Hon. Lord Morison (Chairman).
The Right Hon. William Adamson, LL.D.
Mrs. Thomas Johnston.
Bailie Mrs. Jean Roberts.
The Right Hon. Lord Rowallan, M.C.
J. C. Scott, Esq., S.S.C.
Mrs. Shaw, M.B.E., J.P.

Mr. R. H. Sherwood Calver, Advocate, has been appointed secretary of the committee. [19th December.

LOCAL AUTHORITIES (SUPERANNUATION).

Sir H. JACKSON asked the Financial Secretary to the Treasury whether he is aware, that under some recent local Acts, which provide for payment by a local authority without production of probate, of a sum not exceeding £100 due to a deceased employé on account of wages, superannuation, or otherwise, the local authority is obliged on receipt of notice in writing of any claim of a creditor of the deceased employé within one month from the employé's death, to retain the amount due to the employé or a sum sufficient to satisfy the claim, until it has been satisfied, disproved, or withdrawn; and whether, in view of the probable delay in payment to the deceased's representatives and the difficulty for local authorities in satisfying themselves regarding claims, he will consider the insertion in future cases of better provision for this matter.

Mr. W. S. MORRISON: The legislation in question is designed to give local authorities a reasonable discretion as to the distribution of small amounts in their hands due to deceased employés without depriving other persons of their legal rights. The object of the special provision as to claims of creditors is to compensate creditors for the loss of their rights against the legal personal representative of the deceased, whose discharge would be necessary to protect the local authority if they had no statutory authority to pay without it. I regret that I cannot suggest a better method of making the desired provision. [20th December.

Legal Notes and News.

Honours and Appointments.

The Secretary of State for Scotland has appointed Mr. JAMES BEVERIDGE, First Class Depute, Sheriff Clerk Service, Cupar, to be Sheriff Clerk of Fife, in succession to the late Mr. R. J. Davidson.

The newly created post of Legal Adviser to the Iraqi Foreign Ministry has been filled by the appointment of Mr. ARCHIBALD MCDOUGALL, late Lecturer in Law at the Victoria University of Manchester. The appointment carries with it the duties also of Lecturing Professor in International Law at the Baghdad Law School. Mr. McDougall was called to the Bar by the Middle Temple in 1932 and has practised on the Northern Circuit.

Inverness Town Council have appointed Mr. JAMES MUNRO, solicitor, of Inverness, to the newly created post of Burgh Prosecutor. Mr. Munro is a native of Inverness.

Mr. T. M. WRIGHT, solicitor, a partner in the firm of Messrs. Byrde & Wright, of Honiton, has been appointed Deputy Town Clerk of Honiton. Mr. Wright was admitted a solicitor in 1924.

Professional Announcements.

(2s. per line.)

LAWRANCE, MESSER & CO., of 16, Coleman-street, E.C.2, announce that their senior partner, ALLAN ERNEST MESSER, having occupied that position for thirty-five years, will retire from the firm on the 31st December, 1935. The remaining partners, Stephen Jefferson Gordon, William George Bacon and Clement Frederick Penruddock, are continuing the practice and the name of the firm will remain unchanged.

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

A sessional evening meeting of the members of The Auctioneers' and Estate Agents' Institute will be held at 29, Lincoln's Inn-fields, W.C.2, on Thursday, 2nd January, 1936, at 7 p.m., when Mr. H. A. Hill, B.A. (Barrister-at-Law), will deliver a paper entitled: "The Housing Act, 1935."

The Minister of Health gives notice that, as provided in the Widows', Orphans' and Old Age Contributory Pensions Act, 1925, the ordinary rates of contribution under the combined health insurance and pensions scheme will from the week beginning on the 6th January, be 1s. 8d. for men and 1s. 2d. for women. Of these contributions ordinarily one-half will be payable by the employer and one-half by the employee. Further details can be obtained on application at any post-office. Health and pensions insurance stamps of the new values will be obtainable at all post-offices at the beginning of January, and stamps of the old values will be withdrawn from sale shortly thereafter.

In view of the success of its recent course of lectures on Industrial Law, the Industrial Welfare Society is again arranging a similar course to be held weekly on Wednesdays, from the 22nd January next, at the headquarters of the Society, 14, Hobart-place, Westminster, S.W.1. The lecturer will again be Mr. H. Samuels, M.A., Barrister-at-Law. The course is intended for all persons engaged in administrative work in industry and commerce, as well as for persons intending to take up such posts. The object is to give those taking it a knowledge of those branches of the law which they will need in their work, treated, as far as possible, from a practical rather than an academic standpoint. A detailed syllabus and further particulars can be obtained on application to the secretary of the Society.

At a meeting of the Faculty of Procurators in Dumbarton, held in the County Buildings at Dumbarton, on 19th December, the following motion was proposed, seconded and unanimously agreed to: "That it be recommended to each member of the Faculty that separate bank accounts be kept for each trust or fund under his control; that each trust account be balanced annually, and audited either by a Chartered Accountant or other person appointed by the trustees, and that the trust securities be exhibited to such auditor annually; that the foregoing recommendation be reported to the Scottish Law Agents Society, and that the Society be requested to draw up rules for the keeping of law agents' accounts on similar lines to those promulgated under the recent English Solicitors Act of 1933."

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 9th January, 1936.

	Div. Months.	Middle Price 23 Dec. 1935.	Flat Interest Yield.			‡Approximate Yield with redemption		
			£	s.	d.	£	s.	d.
ENGLISH GOVERNMENT SECURITIES								
Consols 4% 1957 or after	FA	115½	3	9	3	2	19	10
Consols 2½%	JAJO	86	2	18	2	—		
War Loan 3½% 1952 or after	JD	105½	3	6	4	3	1	7
Funding 4% Loan 1960-90	MN	116¾	3	8	6	3	0	2
Funding 3% Loan 1959-69	AO	102	2	18	10	2	17	8
Victory 4% Loan Av. life 23 years	MS	115½	3	9	3	3	1	0
Conversion 5% Loan 1944-64	MN	120	4	3	4	2	4	9
Conversion 4½% Loan 1940-44	JJ	110¾	4	1	3	2	7	6
Conversion 3½% Loan 1961 or after	AO	107½	3	5	1	3	1	4
Conversion 3% Loan 1948-53	MS	104½	2	17	5	2	11	2
Conversion 2½% Loan 1944-49	AO	101½	2	9	3	2	6	0
Local Loans 3% Stock 1912 or after	JAJO	95¾	3	2	8	—		
Bank Stock	AO	370½	3	4	9	—		
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	87	3	3	3	—		
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	95	3	3	2	—		
India 4½% 1950-55	MN	114½	3	18	7	3	3	11
India 3½% 1931 or after	JAJO	97	3	12	2	—		
India 3% 1948 or after	JAJO	86	3	9	9	—		
Sudan 4½% 1939-73 Av. life 27 years	FA	120	3	15	0	3	7	3
Sudan 4% 1974 Red. in part after 1950	MN	115½	3	9	3	2	14	7
Tanganyika 4% Guaranteed 1951-71	FA	115	3	9	7	2	15	4
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109½	4	2	2	2	15	1
COLONIAL SECURITIES								
Australia (Commonw'th) 4% 1955-70	JJ	108	3	14	1	3	8	10
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	103	3	12	10	3	9	3
Canada 4% 1953-58	MS	111	3	12	1	3	3	8
*Natal 3% 1929-49	JJ	100	3	0	0	3	0	0
*New South Wales 3½% 1930-50	JJ	101	3	9	4	—		
*New Zealand 3% 1945	AO	100	3	0	0	3	0	0
Nigeria 4% 1963	AO	114	3	10	2	3	4	8
*Queensland 3½% 1950-70	JJ	101	3	9	4	3	8	2
South Africa 3½% 1953-73	JD	107	3	5	5	2	19	5
*Victoria 3½% 1929-49	AO	102	3	8	8	—		
CORPORATION STOCKS								
Birmingham 3% 1947 or after	JJ	96	3	2	6	—		
*Croydon 3% 1940-60	AO	100	3	0	0	3	0	0
Essex County 3½% 1952-72	JD	104½	3	7	0	3	3	1
Leeds 3% 1927 or after	JJ	95	3	3	2	—		
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	105	3	6	8	—		
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	82	3	1	0	—		
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95	3	3	2	—		
Manchester 3% 1941 or after	FA	96	3	2	6	—		
*Metropolitan Consd. 2½% 1920-49	MJSD	100½	2	9	9	—		
Metropolitan Water Board 3% "A" 1963-2003	AO	98	3	1	3	3	1	5
Do. do. 3% "B" 1934-2003	MS	98	3	1	3	3	1	5
Do. do. 3% "E" 1953-73	JJ	100xd	3	0	0	3	0	0
†Middlesex County Council 4% 1952-72	MN	114	3	10	2	2	18	10
† Do. do. 4½% 1950-70	MN	117	3	16	11	3	1	4
Nottingham 3% Irredeemable	MN	95	3	3	2	—		
Sheffield Corp. 3½% 1968	JJ	103½xd	3	7	8	3	6	4
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS								
Gt. Western Rly. 4% Debenture	JJ	112xd	3	11	5	—		
Gt. Western Rly. 4½% Debenture	JJ	122½xd	3	13	6	—		
Gt. Western Rly. 5% Debenture	JJ	134½xd	3	14	4	—		
Gt. Western Rly. 5% Rent Charge	FA	133½xd	3	14	11	—		
Gt. Western Rly. 5% Cons. Guaranteed	MA	131½	3	16	1	—		
Gt. Western Rly. 5% Preference	MA	118½	4	4	5	—		
Southern Rly. 4% Debenture	JJ	112	3	11	5	—		
Southern Rly. 4% Red. Deb. 1962-67	JJ	112½	3	11	1	3	5	11
Southern Rly. 5% Guaranteed	MA	133½	3	14	11	—		
Southern Rly. 5% Preference	MA	118½	4	4	5	—		

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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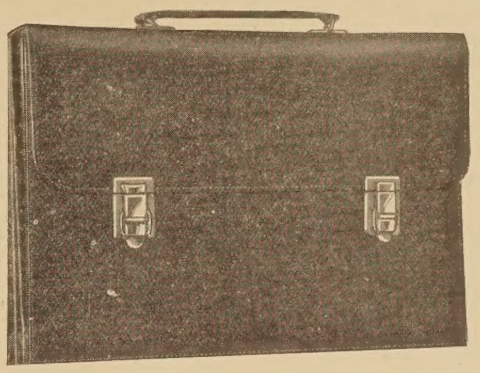

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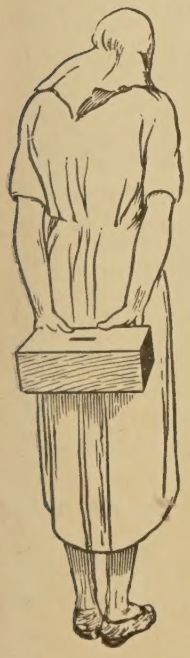

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